

## **ZONING CHANGE REVIEW SHEET**

**CASE:** C14-2017-0042 (12602 Blackfoot Trail)

**Z.A.P. DATE:** June 6, 2017

July 18, 2017

August 15, 2017

**DISTRICT AREA:** 6

**ADDRESS:** 6610 McNeil Drive/12602 Blackfoot Trail

**OWNER/APPLICANT:** Abraham Birgani

**AGENT:** Shaw Hamilton Consultants (Shaw Hamilton)

**ZONING FROM:** LR-CO, SF-2    **TO:** CS-1-MU\*    **AREA:** 0.57 acres

\*On May 16, 2017, the applicant submitted a letter amending the rezoning request to CS-MU.

### **SUMMARY STAFF RECOMMENDATION:**

The staff's recommendation is to grant LR-MU, Neighborhood Commercial-Mixed Use Combining District, zoning.

### **ZONING AND PLATTING COMMISSION RECOMMENDATION:**

6/06/17: Postponed to July 18, 2017 at the applicant's request on consent (10-0, D. Breithaupt-absent); A. Aguirre-1<sup>st</sup>, S. Lavani-2<sup>nd</sup>.

7/18/17: Postponed to August 15, 2017 at the neighborhood's request on consent (10-0, Y. Flores-absent); S. Lavani-1<sup>st</sup>, A. Denkler-2<sup>nd</sup>.

8/15/17: Approved maintaining SF-2 zoning for the existing Tract 1 and GR-MU-CO zoning for the existing Tract 2, with the following conditions for Tract 2: 1) Prohibit Alternative Financial Services, Automotive Washing (of any type), Bail Bond Services, Drop-Off Recycling Collection Facility, Medical Office-exceeding 5,000 sq. ft. gross floor area, Medical Offices-not exceeding 5,000 sq. ft. gross floor area, Outdoor Entertainment, Pawn Shop Services, Service Station, Congregate Living, Guidance Services, Hospital Services (General), Hospital Services (Limited), Residential Treatment and Drive-In Services and 2) maintain the condition from Ordinance No. 9907722-46 that, "Pedestrian and vehicular traffic associated with a non-residential use on the Property may not access Blackfoot Trail." (7-0, D. Breithaupt, B. Evans, S. Lavani and S. Trinh-absent); J. Duncan-1<sup>st</sup>, A. Aguirre-2<sup>nd</sup>.

### **DEPARTMENT COMMENTS:**

The property in question is currently developed with a vacant commercial structure and adjoining single family residence. The site is surrounded by single family residential uses to the north and east and a day care use (Stepping Stone) to the west. The tracts of land to the south, across McNeil Drive, are undeveloped. In 1999, this property was rezoned from SF-1 to SF-2 (Tract 1) and SF-1 to LR-CO (Tract 2) through zoning case C14-98-0146. The ordinance requires a solid fence along the eastern property line, limits any building on the site being taller than 20 ft. in height, restricts pedestrian and vehicular access on Blackfoot Trail and prohibits seventeen uses on the site (Please see Ordinance No. 9907722-46: Attachment A). In this case, the applicant is requesting a rezoning of the property from SF-2 and LR-CO to CS-MU to develop a new commercial uses on the site.

There is also a public restrictive covenant for this property that requires a six foot wooden fence along the eastern property line, limits the hours of operation for a business, prohibits massage parlors, requires that dumpster pickup be accessed from McNeil Road and states that the applicant shall install nine replacement trees on the property (Please see Public Restrictive Covenant: Attachment B). The applicant submitted a restrictive covenant termination application to the City on August 10, 2017. The RCT case, C14-98-0146(RCT), will be processed as a separate application and will come before the Zoning and Platting Commission and City Council in the future for review and approval.

The staff recommends LR-MU zoning because the site meets the intent of the Neighborhood Commercial District designation. The proposed LR-MU zoning will promote consistency and orderly planning as it will provide a transition in the intensity of uses away from McNeil Drive to the north. Neighborhood Commercial zoning is compatible with the school/day care use to the west and the single family residential uses to the north and east of the site. LR-MU zoning will low intensity commercial, office and civic uses that will provide services for residential development to the north and east of the property under consideration.

The applicant does not agree with the staff's recommendation.

### **ISSUES:**

On May 8, 2017, the staff received a petition from adjacent property owners who are opposed to any zoning classification other than the current LR-CO and SF-2 zoning on the site (Please see Petition Submittal - Attachment C). This GIS staff evaluated the petition and found that it is currently **invalid** at 12.43%. The excerpt below is from the City of Austin's Land Development Code and explains when the City Council is subject to the three-fourths vote.

#### ***Sec. 25-2-284 REQUIREMENT FOR APPROVAL BY THREE-FOURTHS OF COUNCIL.***

- (A) *The affirmative vote of three-fourths of the members of Council is required to approve a proposed **rezoning** if:*
- (1) the Land Use Commission recommends denial of an application to **rezone** property to a planned unit development; or*
  - (2) the proposed **rezoning** is protested in writing by the owners of not less than 20 percent of the area of land:*
    - (a ) included in the proposed change; or*
    - (b) immediately adjoining the area included in the proposed **rezoning** and extending 200 feet from the area.*

### **EXISTING ZONING AND LAND USES:**

	<b>ZONING</b>	<b>LAND USES</b>
<i>Site</i>	LR-CO, SF-2	Vacant Commercial Building, Single Family Residence
<i>North</i>	SF-2	Single Family Residences
<i>South</i>	LI	Undeveloped
<i>East</i>	SF-1	Single Family Residences
<i>West</i>	RR	Day Care (Stepping Stone School)

**AREA STUDY:** N/A

**TIA:** Deferred

**WATERSHED:** Rattan Creek

**DESIRED DEVELOPMENT ZONE:** Yes

**CAPITOL VIEW CORRIDOR:** N/A

**HILL COUNTRY ROADWAY:** N/A

**NEIGHBORHOOD ORGANIZATIONS:**

Austin Heritage Tree Foundation  
Bike Austin  
Friends of Austin Neighborhoods  
Homeless Neighborhood Association  
Indian Oaks Neighborhood Association  
Northwest Austin Coalition  
SELTEXAS  
Sierra Club, Austin Regional Group  
TNR BCP-Travis County Natural Resources

**CASE HISTORIES:**

NUMBER	REQUEST	COMMISSION	CITY COUNCIL
C14-2016-0123 (6914 McNeil Dr.)	I-RR to GR	1/17/17: Approved staff's recommendation of GR-CO zoning, with CO to prohibit with additional conditions to prohibit Automotive Rentals Automotive Repair Services Automotive Sales, Automotive Washing (of any type), Bail Bond Services, Commercial Off-Street Parking, Drop Off Recycling Facility, Exterminating Services, Funeral Services, Pawn Shop Services Research Services, Service Station, with additional conditions to prohibit Hospital Services, Alternative Financial Services, and Drive-In Services uses and to include a public restrictive covenant to require the installation of sidewalks and sidewalk improvements (8-2, J. Kiolbassa, B. Greenberg-No; D. Breithaupt-absent); S. Harris-1 <sup>st</sup> , B. Evans-2 <sup>nd</sup> .	1/26/17 : Approved Zoning and Platting Commission's recommendation of GR-CO zoning, with conditions, on 1 <sup>st</sup> reading on consent (11-0); D. Garza-1 <sup>st</sup> , P. Renteria-2 <sup>nd</sup> .
C14-2015-0136 (6914 McNeil Dr.)	I-RR to GR	11/17/15: Postponed at the applicant's request to December 15, 2015 (10-0); A. Denkler-2 <sup>nd</sup> , B. Evans-2 <sup>nd</sup> .	12/10/15: Postponed to February 11, 2016 at the staff's request (10-0, S. Adler-absent)

		<p>12/15/16: Postponed at the applicant's request to January 5, 2016 (7-0, D. Breithaupt, Y. Flores, S. Harris-absent); B. Evans-1<sup>st</sup>, S. Lavani-2<sup>nd</sup>.</p> <p>01/05/16: Postponed at the applicant's request to January 19, 2016 (8-0, S. Lavani-absent, J. Goodman-arrived late); T. Webber-1<sup>st</sup>, A. Denkler-2<sup>nd</sup>.</p> <p>01/19/16: Postponed at the applicant's request to February 2, 2016 (10-0); T. Webber-1<sup>st</sup>, S. Lavani-2<sup>nd</sup>.</p> <p>02/02/16: Approved applicant's request for an indefinite postponement (10-0); J. Goodman-1<sup>st</sup>, J. Kiolbassa-2<sup>nd</sup>.</p> <p>Case expired on July 31, 2016 in accordance with LDC Section 25-2-246(A)(2).</p>	<p>02/11/16: Postponed indefinitely at the request of the applicant (11-0); L. Pool-1<sup>st</sup>, D. Zimmerman-2<sup>nd</sup>.</p>
C14-2012-0099 (Myers Zoning Change: 6810 McNeil Drive)	I-SF-2 to €S GR	<p>11/06/12: Approved GR-CO zoning (6-0, G. Rojas-absent); P. Seeger-1<sup>st</sup>, J. Meeker-2<sup>nd</sup>, with the following conditions 1) Limit the development intensity for the site to less than 2,000 vehicle trips per day, 2) Prohibit the following uses as offered by the applicant: Automotive Repair Services, Automotive Washing (of any kind), Bail Bond Services, Commercial Off-Street Parking, Drop-Off Recycling Collection Facility, Exterminating Services, Food Sales, Funeral Services, Hotel/Motel, Indoor Entertainment, Indoor Sports and Recreation, Off-Site Accessory Parking, Outdoor Entertainment, Outdoor Sports and Recreation, Plant Nursery, Theater, Custom Manufacturing, College and University Facilities, Communication Service Facilities, Community Recreation (Private &amp; Public),</p>	<p>11/08/12: Approved GR-CO zoning on consent on 1<sup>st</sup> reading (6-0, S. Cole-off dais); L. Morrison-1<sup>st</sup>, M. Martinez-2<sup>nd</sup>.</p> <p>12/13/12: Approved GR-CO zoning on consent on 2<sup>nd</sup>/3<sup>rd</sup> readings (7-0), L. Morrison-1<sup>st</sup>, B. Spelman-2<sup>nd</sup>.</p>



		<p>Counseling Services, Guidance Services, Hospital Services (General), Hospital Services (Limited), Local Utility Services, Private Primary Educational Facilities, Private Secondary Educational Facilities, Public Primary Educational Facilities, Residential Treatment, Safety Services; 3) Add Automotive Sales and Service Station as prohibited uses.</p> <p>4) Prohibit/restrict hours of operation between 12:00 a.m. and 6:00 a.m.</p>	
C14-2008-0098 (12205 Pecan Street)	SF-3 to LI	<p>7/01/08: Approved staff's rec. of LI-CO zoning, with added condition to prohibit Adult Oriented Businesses, by consent (6-0, J. Martinez, K. Jackson-absent) T. Rabago-1<sup>st</sup>, J. Shieh-2<sup>nd</sup>.</p>	<p>8/07/08: Approved LI-CO district zoning, with the following conditions: 2,000 vtpdl, prohibit Adult Oriented Businesses and 35-feet of right-of-way should be dedicated from the centerline of Pecan Street through a street deed, by consent (7-0); B. McCracken-1<sup>st</sup>, S. Cole-2<sup>nd</sup>.</p>
C14-2008-0095 (Jekel Rezoning: 12214 Jekel Circle)	SF-3 to LI	<p>7/01/08: Approved staff's recommendation of LI-CO zoning, with added condition to prohibit Adult Oriented Businesses, by consent (6-0, J. Martinez, K. Jackson-absent) T. Rabago-1<sup>st</sup>, J. Shieh-2<sup>nd</sup>.</p>	<p>8/07/08: Approved LI-CO district zoning, with the following conditions: 2,000 vtpdl, prohibit Adult Oriented Businesses and 35-feet of right-of-way should be dedicated from the centerline of Jekel Circle through a street deed, by consent (7-0); B. McCracken-1<sup>st</sup>, S. Cole-2<sup>nd</sup>.</p>
C14-2008-0069 (IABA Phase-1: 12460 Los Indios Trail)	I-RR to MF-3	<p>6/17/08: Approved SF-6-CO district zoning with conditions of: Restricting to no duplexes, multi-family, town homes or condominiums; Maximum of 30 units; 25' undisturbed vegetative setback and a 50' building setback from the northern property line; 300 vehicle trips per day; Commissioner Keith Jackson's motion, Commissioner Joseph Martinez second the motion on a vote of 8-0; with 1 vacancy on this commission.</p>	<p>7/24/08: Approved the ZAP Commission's rec. of SF-6-CO zoning, with restrictions as follows: no attached single family dwellings and 35' height limitation with exceptions allowed under the Code up to 40'. The parking will be agreed upon by involved parties. (7-0); Council Member Cole-1<sup>st</sup>, Council Member Martinez-2<sup>nd</sup>; 1<sup>st</sup> reading</p> <p>7/23/09: Approved SF-6-CO zoning on consent on 2<sup>nd</sup>/3<sup>rd</sup> readings (7-0); Morrison-1<sup>st</sup>, Martinez-2<sup>nd</sup>.</p>

C14-03-0107 (Los Indios Lift Station: 12507 Oro Valley Trail)	SF-4A to P	8/26/03: Approved staff's recommendation of 'P' zoning by consent (8-0, K. Jackson- absent); J. Martinez-1 <sup>st</sup> , J. Gohil- 2 <sup>nd</sup> .	9/25/03: Granted 'P' (7-0); all 3 readings
C14-03-0074 (Gateway Community Church: 7014 McNeil Drive)	SF-6-CO to GO	6/3/03: Approved GO-CO zoning, with the following conditions: 1) Limit the development intensity on the site to less than 2,000 vehicle trips per day. 2) Allow GO, General Office district, zoning height (60 feet) and impervious cover (80%) standards. Limit all other site development regulations to LO, Limited Office district, zoning standards. 3) Permit LO district uses (prohibit the following GO district uses): Business or Trade School, Business Support Services, College and University Facilities, Congregate Living, Hospital Services (General), Hospital Services (Limited), Private Secondary Education Facilities, Off-Site Accessory Parking, Personal Services, Restaurant (Limited); 4) Provide a 25-foot setback (buffer zone) from the North property line for the area that is zoned SF-1. 5) Provide a 25-foot setback from the East property line for the area that is zoned SF-1 and the lot zoned SF-2.	7/17/03: Granted GO-CO; prohibiting vehicle access to Lobelia Dr. (7-0); all 3 readings
C14-03-0059 (McNeil Deal: 6917 McNeil Drive)	SF-3 to CS	5/6/03: Approved staff's rec. of CS-CO zoning with condition to prohibit the following uses: <ul style="list-style-type: none"> <li>• Drop-off Recycling Collection Facility</li> <li>• Scrap and Salvage</li> <li>• Convenience Storage</li> <li>• Pawnshop Services</li> </ul> (8-0, K. Jackson-absent)	6/5/03: Approved CS-CO (7-0); all 3 readings

C14-00-2218 (6514 McNeil Drive)	I-RR to GO	2/13/01: Approved staff rec. of GO-CO by consent (9-0)	3/22/01: Approved GO-CO zoning, with the following conditions: 660 vehicle trip limit and 40 foot height limit (7-0); all 3 readings
C14-99-0095	SF-3 to CS	6/29/99: Approved staff's alternate rec. of CS-CO (8-0)	7/29/99: Approved PC rec. of CS-CO (6-0); all 3 readings

**RELATED CASES:** C14-98-0146 (Previous Zoning Case)

**ABUTTING STREETS:**

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Capital Metro (within ¼ mile)
McNeil Drive	100 ft	60 ft	MAD 4	No	No	No
Blackfoot Trail	60 ft	40 ft	Neighborhood Collector	Yes – Eastern Side Only	No	No

**CITY COUNCIL DATE:** August 3, 2017

**ACTION:** Postponed to August 31, 2017 at the staff's request by consent (11-0); D. Garza-1<sup>st</sup>, G. Casar-2<sup>nd</sup>.

August 31, 2017

**ACTION:** Postponed to October 5, 2017 at the request of the applicant on Council Member Renteria's motion, Council Member Troxclair's second on an 11-0 vote.

October 5, 2017

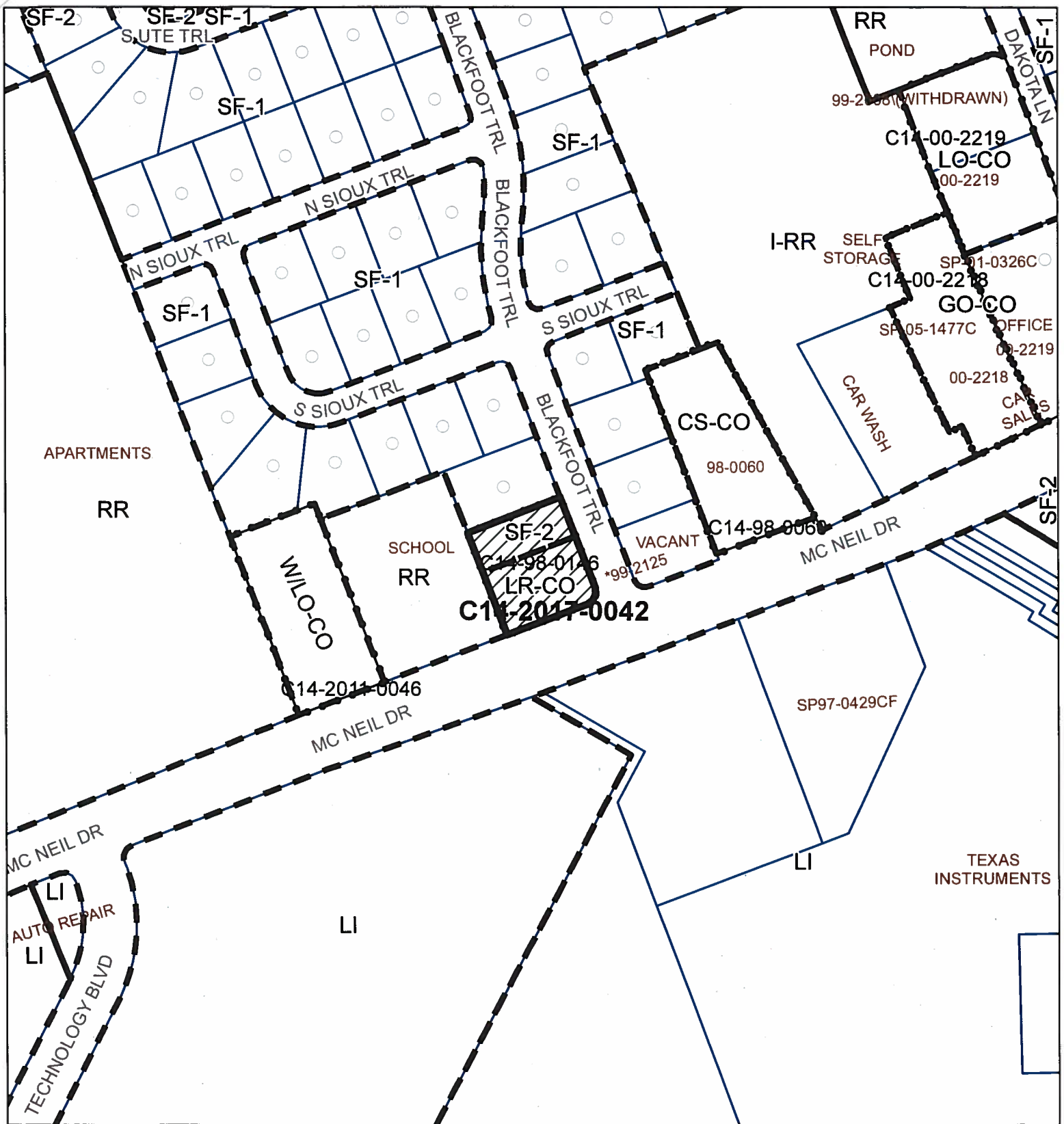
**ACTION:**

**ORDINANCE READINGS:** 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup>

**ORDINANCE NUMBER:**

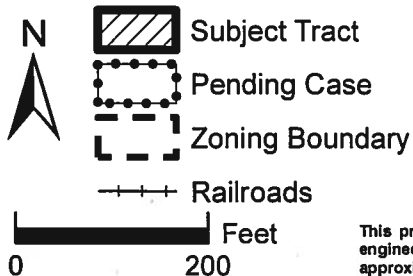
**CASE MANAGER:** Sherri Sirwaitis

**PHONE:** 512-974-3057,  
[sherri.sirwaitis@austintexas.gov](mailto:sherri.sirwaitis@austintexas.gov)



## ZONING

Case#: C14-2017-0042



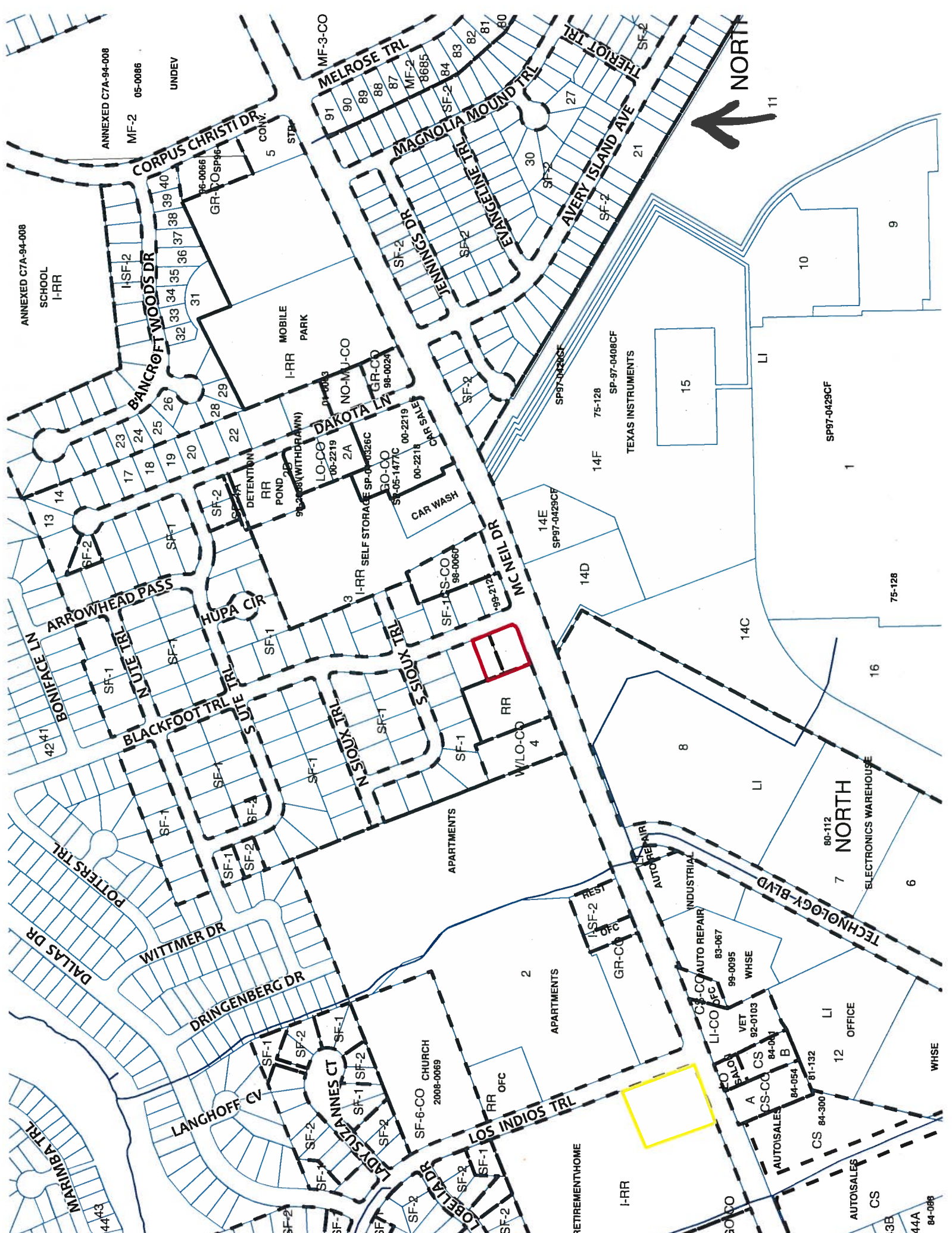
1" = 200'

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Created: 4/19/2017



ANNEXED C7A-94-008  
SCHOOL  
I-RR

ANNEXED C7A-94-008  
MF-2 05-0086  
UNDEV

NORTH

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SP97-0429CF

75-128

16

80-112  
NORTH

ELECTRONICS WAREHOUSE

6

LI

12

OFFICE

WHSE

43B

44A

84-086

RETIREMENT HOME

I-RR

GONCO

AUTO SALES

CS

CS

84-054

81-132

LI

12

OFFICE

LI

80-112

NORTH

LI

8

14C

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75-128

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## STAFF RECOMMENDATION

The staff's recommendation is to grant LR-MU, Neighborhood Commercial-Mixed Use Combining District, zoning.

## BASIS FOR RECOMMENDATION

1. *The proposed zoning should be consistent with the purpose statement of the district sought.*

Neighborhood commercial (LR) district is the designation for a commercial use that provides business service and office facilities for the residents of a neighborhood. Site development regulations and performance standards applicable to a LR district use are designed to ensure that the use is compatible and complementary in scale and appearance with the residential environment.

The purpose of a mixed use (MU) combining district is to allow office, retail, commercial, and residential uses to be combined in a single development.

The property in question is located at the entrance to a residential neighborhood at the northwest corner of McNeil Drive and Blackfoot Trail.

2. *The proposed zoning should promote consistency and orderly planning.*

The proposed LR-MU zoning will promote consistency and orderly planning as it will provide a transition in the intensity of uses (from low intensity commercial to single-family uses) away from McNeil Drive to the north. The proposed zoning is compatible with the surrounding residential uses located to the north and east of the site.

3. *The proposed zoning should allow for a reasonable use of the property.*

The proposed LR-MU zoning will allow for neighborhood friendly commercial, office and civic uses that will provide services for single-family residential neighborhood to the north of this site.

## EXISTING CONDITIONS

### Site Characteristics

The site under consideration is developed with a vacant commercial/retail structure and a single family residence. The site is surrounded by single family residences to the north and east and a day care use (Stepping Stone) to the west. The tracts of land to the south, across McNeil Drive, are undeveloped.

### Comprehensive Planning

SF-2 (Tract 1) and LR-CO (Tract 2) to CS-1

This zoning case is located on the northwest corner of McNeil Drive and Blackfoot Trail, on a parcel that is approximately .57 acres in size and contains a one story commercial building, which is vacant. The property is not located within the boundaries of a neighborhood planning area. Surrounding land uses includes a single family house to the north; vacant land to the south; a small house to the east; and a small private school to the west. The proposal is to obtain a commercial zoning designation,

which would permit liquor sales and remove the existing CO. The existing CO limits any building on the site being taller than 20 ft. in height; restricts pedestrian and vehicular access on Blackfoot Trail; and prohibits 17 uses on the site, including but not limited to: general retail; restaurants; congregate living; convenience store; and gas stations.

**Connectivity:** Public sidewalks are located intermittently along McNeil Drive. There is a CapMetro transit stop located within three quarters of a mile from this site. The Walkscore for this property 33/100, meaning most errands require a car.

### **Imagine Austin**

The site is not located within an Activity Center or along an Activity Corridor. Based on the comparative scale of the site relative to nearby commercial uses located along McNeil Drive, this case falls below the scope of Imagine Austin, which is broad in scope, and consequently the plan is neutral on the proposed rezoning. However, staff highly recommends that the developer install a public sidewalk along McNeil Drive to ensure there is defined pedestrian walkway on this side of the street.

### **Environmental**

The site is located over the North Edwards Aquifer Recharge Zone. The site is in the Rattan Creek Watershed, which is classified as a Suburban Watershed by Chapter 25-8 of the City's Land Development Code. It is in the Desired Development Zone.

According to floodplain maps there is no floodplain within or adjacent to the project location.

Standard landscaping and tree protection will be required in accordance with LDC 25-2 and 25-8 for all development and/or redevelopment.

Trees will likely be impacted with a proposed development associated with this rezoning case. Please be aware that an approved rezoning status does not eliminate a proposed development's requirements to meet the intent of the tree ordinances. If further explanation or specificity is needed, please contact the City Arborist at 974-1876. At this time, site specific information is unavailable regarding other vegetation, areas of steep slope, or other environmental features such as bluffs, springs, canyon rimrock, caves, sinkholes, and wetlands.

Under current watershed regulations, development or redevelopment requires water quality control with increased capture volume and control of the 2 year storm on site.

At this time, no information has been provided as to whether this property has any preexisting approvals that preempt current water quality or Code requirements.

### **Impervious Cover**

The maximum impervious cover allowed by the CS-1 zoning district would be 95%. However, because the watershed impervious cover is more restrictive than the zoning district's allowable impervious cover, the impervious cover is limited by the watershed regulations.



Under current watershed regulations, development or redevelopment on this site will be subject to the following impervious cover limits:

<i>Development Classification</i>	<i>% of Gross Site Area</i>	<i>% of Gross Site Area with Transfers</i>
Single-Family Residential (min. lot size 5750 sq. ft.)	45%	50%
One or Two Family Residential (lot size < 5750 sq. ft.)	55%	60%
Multifamily Residential	60%	65%
Commercial	65%	70%

### **Site Plan**

Site plans will be required for any new development other than single-family or duplex residential.

Any development which occurs in an SF-6 or less restrictive zoning district which is located 540 feet or less from property in an SF-5 or more restrictive zoning district will be subject to compatibility development regulations.

Any new development is subject to Subchapter E. Design Standards and Mixed Use. Additional comments will be made when the site plan is submitted.

### **Compatibility Standards**

The site is subject to compatibility standards. Along the north, east, and west property lines, the following standards apply:

- No structure may be built within 25 feet of the property line.
- No structure in excess of two stories or 30 feet in height may be constructed within 50 feet of the property line.
- No structure in excess of three stories or 40 feet in height may be constructed within 100 feet of the property line.
- No parking or driveways are allowed within 25 feet of the property line.
- A landscape area at least 25 feet wide is required along the property line. In addition, a fence, berm, or dense vegetation must be provided to screen adjoining properties from views of parking, mechanical equipment, storage, and refuse collection.
- For a structure more than 100 feet but not more than 300 feet from property zoned SF-5 or more restrictive, height limitation is 40 feet plus one foot for each 10 feet of distance in excess of 100 feet from the property line.
- An intensive recreational use, including a swimming pool, tennis court, ball court, or playground, may not be constructed 50 feet or less from adjoining SF-3 property.
- A landscape area at least 25 feet in width is required along the property line if the tract is zoned LR, GO, GR, L, CS, CS-1, or CH.

Additional design regulations will be enforced at the time a site plan is submitted.

### **Stormwater Detention**

At the time a final subdivision plat, subdivision construction plans, or site plan is submitted, the developer must demonstrate that the proposed development will not result in additional identifiable flooding of other property. Any increase in stormwater runoff will be mitigated through on-site

stormwater detention ponds, or participation in the City of Austin Regional Stormwater Management Program if available.

### **Transportation**

The Austin Metropolitan Area Transportation Plan calls for a total of 140 feet of right-of-way for McNeil Drive. If the requested zoning is granted, then 70 feet of right-of-way should be dedicated from the existing centerline of McNeil Drive in accordance with the Transportation Plan. [LDC, Sec. 25-6-51 and 25-6-55).\*

**\*On July 31, 2017, the Transportation reviewer, Katie Wettick, sent the applicant a memo from the Austin Transportation Department which defers any ROW dedication to the time of site plan review (Please see Attachment D).**

If the requested zoning is granted, it is recommended that access to McNeil Drive be prohibited as a condition of zoning because 200 feet of frontage is required for a site to have access to a major arterial.\*\*

**\*\*On July 5, 2017 the DSD Transportation review staff sent an e-mail stating that the comment regarding access to McNeil Drive can be deferred to time of site plan (Please see Attachment E).**

According to the Austin 2014 Bicycle Plan approved by Austin City Council in November, 2014, a bike lane is recommended for McNeil Drive.

Per Ordinance No. 20170302-077, off-site transportation improvements and mitigations may be required at the time of site plan application.

A Traffic Impact Analysis shall be required at the time of site plan if triggered per LDC 25-6-113. LDC, Sec. 25-6-113.

A Neighborhood Traffic Analysis is deferred to time of site plan. At time of site plan a neighborhood traffic analysis will be required if triggered per LDC 25-6-114. LDC, Sec. 25-6-114.

- If the projected number of vehicle trips generated by the project exceeds the vehicle trips per day generated by existing uses by at least 300 vehicle trips per day;

Existing Street Characteristics:

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Capital Metro (within ¼ mile)
McNeil Drive	100 ft	60 ft	MAD 4	No	No	No
Blackfoot Trail	60 ft	40 ft	Neighborhood Collector	Yes – Eastern Side Only	No	No

### **Water and Wastewater**

The landowner intends to serve the site with City of Austin water and wastewater utilities. The landowner, at own expense, will be responsible for providing any water and wastewater utility improvements, offsite main extensions, utility relocations and or abandonments required by the land use. The water and wastewater utility plan must be reviewed and approved by Austin Water for compliance with City criteria and suitability for operation and maintenance. Depending on the development plans submitted, water and or wastewater service extension requests may be required. All water and wastewater construction must be inspected by the City of Austin. The landowner must pay the City inspection fee with the utility construction. The landowner must pay the tap and impact fee once the landowner makes an application for a City of Austin water and wastewater utility tap permit.

**ORDINANCE NO. 990722-46**

**AN ORDINANCE REZONING AND CHANGING THE ZONING MAP ACCOMPANYING CHAPTER 25-2 OF THE CITY CODE AS FOLLOWS:**

**TWO TRACTS OF LAND OUT OF THE INDIAN OAKS 2 SUBDIVISION IN WILLIAMSON COUNTY, FROM SINGLE FAMILY RESIDENCE LARGE LOT (SF-1) DISTRICT TO SINGLE FAMILY RESIDENCE STANDARD LOT (SF-2) DISTRICT AND NEIGHBORHOOD COMMERCIAL-CONDITIONAL OVERLAY (LR-CO) COMBINING DISTRICT, LOCALLY KNOWN AS 12602 BLACKFOOT TRAIL, IN THE CITY OF AUSTIN, WILLIAMSON COUNTY, TEXAS.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**PART 1.** The Zoning Map established by Chapter 25-2-191 of the City Code is amended to change the base zoning districts on the property described in File C14-98-0146, as follows:

Tract 1: From Single Family Residence Large Lot (SF-1) district to Single Family Residence (SF-2) district.

All of the north 64 feet of Lot 2, Indian Oaks 2 Subdivision, a subdivision in the City of Austin, Williamson County, Texas, according to the map or plat of record in Cabinet J, Slide 264, of the Official Records of Williamson County, Texas,

Tract 2: From Single Family Residence Large Lot (SF-1) district to Neighborhood Commercial-Conditional Overlay (LR-CO) combining district.

Lot 2, less the north 64 feet of Lot 2, Indian Oaks 2 Subdivision, a subdivision in the City of Austin, Williamson County, Texas, according to the map or plat of record in Cabinet J, Slide 264, of the Official Records of Williamson County, Texas, (the "Property")

locally known as 12602 Blackfoot Trail, in the City of Austin, Williamson County, Texas, and as more particularly identified in the map attached as Exhibit "A".

**PART 2.** The property identified as Tract 2 within the boundaries of the Conditional Overlay combining district established by this ordinance is subject to the following conditions:

1. Owner shall provide a solid fence along the property line that begins at the corner of the business structure attached to the house, go east towards Blackfoot Trail, then south towards McNeil Road.

2. Notwithstanding any other provision of the City Code applicable to the Property on the effective date of this ordinance or at the time an application for approval of a site plan or building permit is submitted, no site plan for development of the Property, or any portion of the Property, may be approved or released, and no building permit for construction of a building on the Property, may be issued if the completed development or uses authorized by the proposed site plan or building permit, considered cumulatively with all existing or previously authorized development and uses of the Property, generates traffic exceeding the total traffic generation of 1,000 vehicle trips per day.

3. No structure of any kind may be built to a height greater than 20 feet above ground level on the Property.

4. The following uses of the Property are prohibited:

Consumer Convenience Services  
Food Sales —  
General Retail Sales (General)  
Bed and Breakfast (Group 1 and 2)  
Restaurant (Limited)  
Congregate Living  
Community Recreation (Public)  
Guidance Services  
Residential Treatment

Consumer Repair Services  
General Retail Sales (Convenience)  
Pet Services  
Restaurant (Drive-In, Fast Food)  
Service Station —  
Community Recreation (Private)  
Counseling Services  
Hospital Services —

5. Pedestrian and vehicular traffic associated with a non-residential use on the Property may not access Blackfoot Trail.

Except as specifically restricted under this ordinance, Tract 2 may be developed and used in accordance with the regulations established for the Neighborhood Commercial (LR) base district and other applicable requirements of the City Code.

**PART 3.** The Council waives the requirements of Sections 2-2-3, 2-2-5, and 2-2-7 of the City Code for this ordinance.

**PART 4.** This ordinance takes effect on August 2, 1999.

**PASSED AND APPROVED**

\_\_\_\_\_  
July 22, 1999

§  
§  
§ *Kirk Watson*  
Kirk Watson  
Mayor

APPROVED: *Andrew Martin* ATTEST: *Shirley A. Brown*  
Andrew Martin Shirley A. Brown  
City Attorney City Clerk

Zoning Case No. C14-98-0146

**RESTRICTIVE COVENANT**

OWNER(S): ABRAHAM BIRGANI  
ADDRESS: 12602 Blackfoot Trail, Austin, Texas  
CONSIDERATION: Ten and No/100 Dollars (\$10 00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged  
PROPERTY: Lot 2, less the north 64 feet of Lot 2, Indian Oaks 2 Subdivision, a subdivision in the City of Austin, Williamson County, Texas, according to the map or plat of record in Cabinet J, Slide 264, of the Official Records of Williamson County, Texas,

WHEREAS, the Owner of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions.

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns

- 1 Owner shall provide a six foot high wooden fence that begins at the corner of the business structure attached to the house, go east towards Blackfoot Trail, then south towards McNeil Road
- 2 The hours of operation for any business located on the Property is restricted as follows.  
Monday through Friday from 8.00 a.m to 8 00 p m  
Saturday from 8:00 a.m to 12.00 p m.  
Sunday. closed for business
- 3 Massage parlor establishments are prohibited as a use of the Property
- 4 Commercial waste pick-up services shall be from McNeil Road.
- 5 Owner shall provide and install nine replacement trees on the Property
- 6 If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
- 7 If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect

8. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
9. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

When the context requires, singular nouns and pronouns include the plural.

EXECUTED this the 22 day of July, 1999.

OWNERS:  
  
ABRAHAM BIRGANI

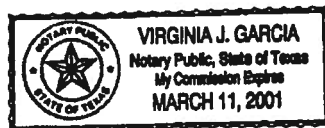
APPROVED AS TO FORM:


  
Assistant City Attorney  
City of Austin

THE STATE OF TEXAS

COUNTY OF TRAVIS

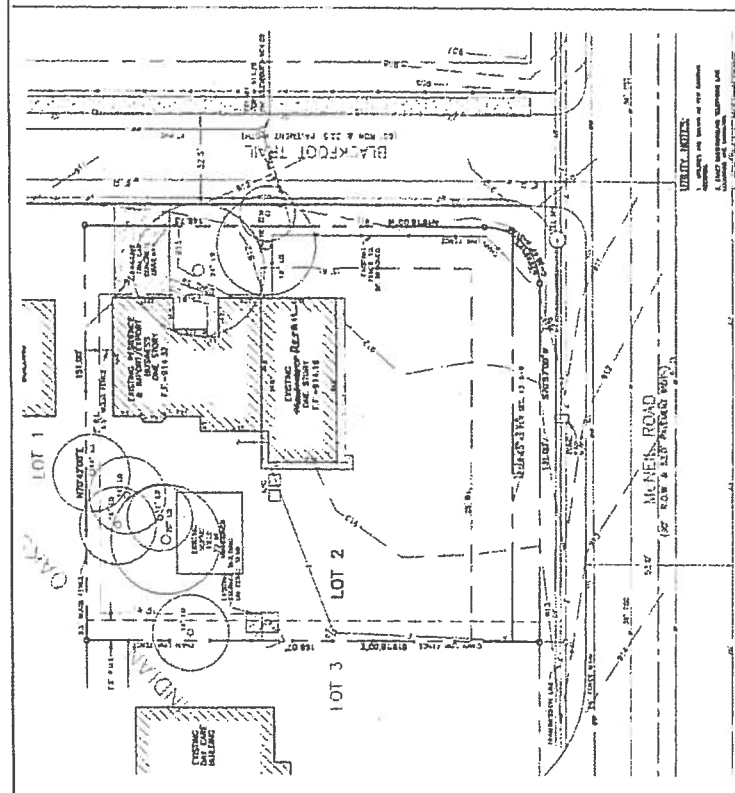
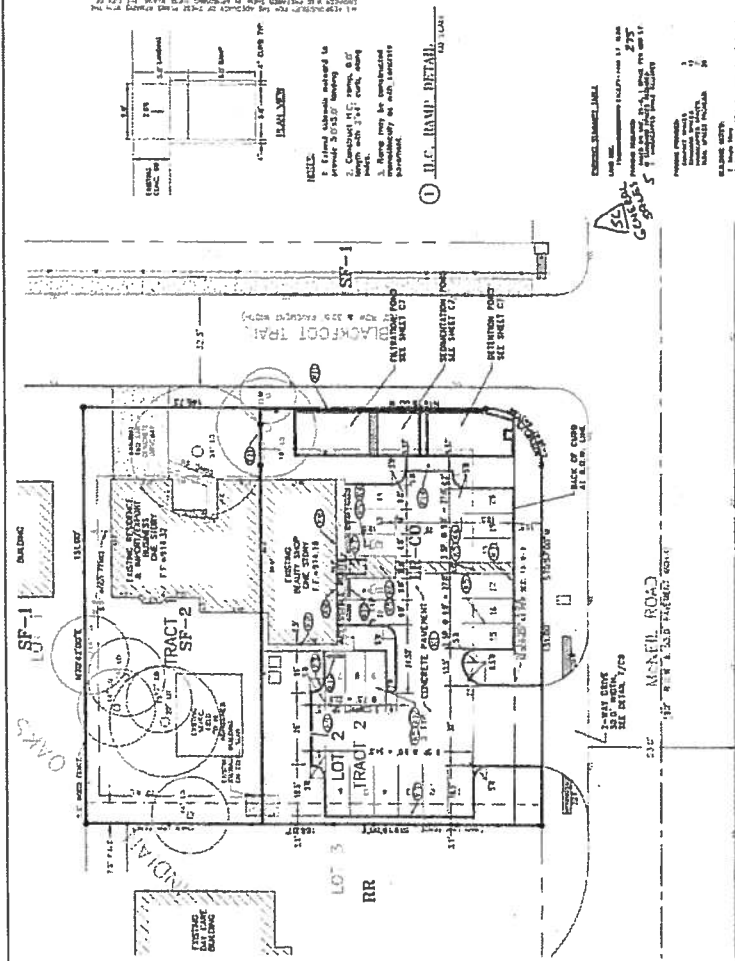
This instrument was acknowledged before me on this the 22<sup>nd</sup> day of July, 1999, by ABRAHAM BIRGANI.



  
Notary Public, State of Texas  
exp. 3-11-2001



DATE PLAN RELEASE March 14  
 FILE NUMBER 62-19741-116 EXTENSION DATE 4-3-2003  
 CASE NUMBER 100-101000-1 FILED 100-101000-1  
 SEARCHED INDEXED SERIALIZED FILED  
 APPROVED BY PLANNING COMMISSION ON 4-1-10  
 APPEARED BY CITY COUNCIL ON 4-1-10  
 signed by [Signature] Director of Planning  
 signed by [Signature] Director of Capital Assets & Public Utility City Code  
 Planning, Development Review and Construction Department  
 DATE OF RELEASE March 28, 2003 Version SP-6 1576-00  
 Item 1 Corrected 100-101000-1  
 Item 2 Corrected 100-101000-1  
 Item 3 Corrected 100-101000-1  
 Item 4 Corrected 100-101000-1



**LEGEND**

EXISTING CONTOUR LINE	---
EXISTING FENCE	---
EXISTING WATER	---
EXISTING WASTEWATER	---
EXISTING ELECTRIC	---
EXISTING UNDERGROUND TELEPHONE	---
PROPERTY LINE	---
EXISTING TREE	---
TORNO BOUNDARY	---
SETBACK	---
PROPOSED FENCE	---
PROPOSED CONCRETE	---
PROPOSED MATERIALS	---

**PROPOSED SITE PLAN**  
SCALE: 1" = 20.0'

The proposed site plan shows the layout of the new building and parking areas. Key features include:
 

- Building Layout:** A new building footprint with various rooms.
- Parking Areas:** New parking spaces and access points.
- Surrounding Features:** McNeil Road, Blackfoot Trail, and existing vegetation.
- Scale:** 1" = 20.0'

**EXISTING TOPOGRAPHY & EXISTING SITE PLAN**  
SCALE: 1" = 20.0'

This plan shows the existing conditions of the site, including the current building layout, parking areas, and surrounding features. Key features include:
 

- Building Layout:** The existing building footprint and internal divisions.
- Parking Areas:** Existing parking spaces and access points.
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Case Number:  
**C14-2017-0042**

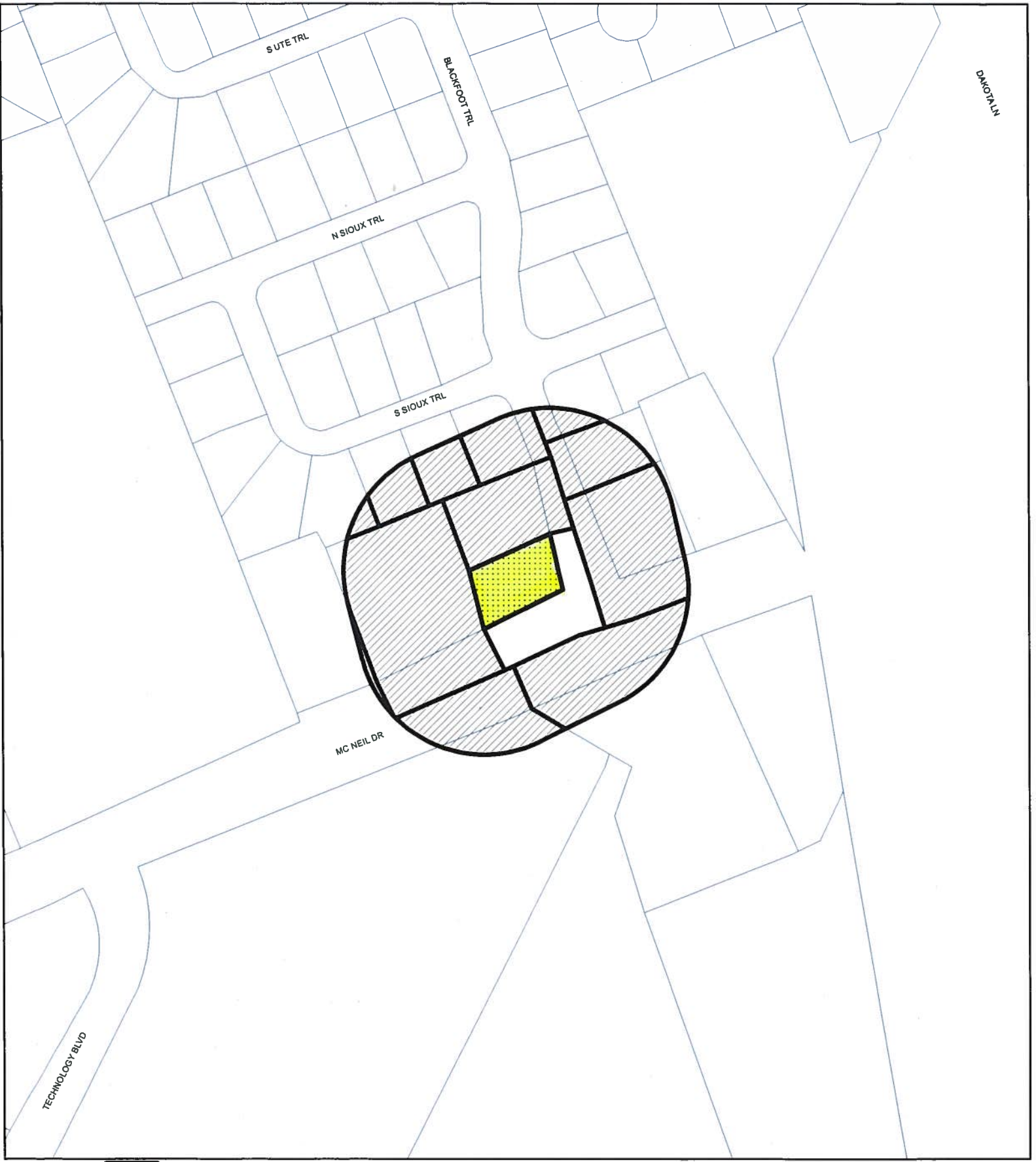
## PETITION




Date: 7/13/2017  
Total Square Footage of Buffer: 219055.5379  
Percentage of Square Footage Owned by Petitioners Within Buffer: 12.43%

Calculation: The total square footage is calculated by taking the sum of the area of all TCAD Parcels with valid signatures including one-half of the adjacent right-of-way that fall within 200 feet of the subject tract. Parcels that do not fall within the 200 foot buffer are not used for calculation. When a parcel intersects the edge of the buffer, only the portion of the parcel that falls within the buffer is used. The area of the buffer does not include the subject tract.

TCAD ID	Address	Owner	Signature	Petition Area	Percent
R322630	6702 MCNEIL DR    AUSTINTX78729	6702 MCNEIL LTD	no	1131.25	0.00%
R065469	12604 BLACKFOOT TRL    AUSTINTX78729-7703	BIRGANI   ABRAHAM	no	21045.84	0.00%
R065374	7005 S SIOUX TRL    AUSTINTX78729-7742	FEHR   E SCOTT	yes	10462.69	4.78%
R065372	7009 S SIOUX TRL    AUSTINTX78729	GALAVIZ ABEL & MARIA R (LE) & REVOCABLE LIVING TRUST	yes	6075.02	2.77%
R065371	7011 S SIOUX TRL    AUSTINTX78729-7742	JACKSON   JANIE S & ROBERT	no	1597.14	0.00%
R322627	1910 JUSTIN LN    AUSTINTX78757-2492	PAVER FAMILY ENTERPRISES LP	no	55440.53	0.00%
	% PS BUSINESS PARKS INCAttn: Assistant Vice President-A/D701 WESTERN				
R066560	AVEGLENDALECA91201	PS BUSINESS PARKS LP	no	20336.50	0.00%
	ATTN: BRIAN HURLEY% HRPT PROPERTIES TRUST9 GALEN ST STE				
R405452	400WATERTOWNMA02472-4522	RESEARCH PARK PROP TRUST	no	28823.08	0.00%
R065362	12607 BLACKFOOT TRL    AUSTINTX78729-7704	ROBERTS   DAVID ALAN & PAMELA JO	yes	3577.07	1.63%
R065364	12605 BLACKFOOT TRL    AUSTINTX78729	SIEBELINK   DAVID & ROBIN F	no	12362.90	0.00%
R065373	7006 S SIOUX TRL    AUSTINTX78729-7741	TRENHOLM   JOHN D & LINDA	yes	7121.81	3.25%
R065365	12603 BLACKFOOT TRL    AUSTINTX78729-7704	ZARCHI   MEHDI & ELHAM TARKASHVAND	no	33718.09	0.00%
<b>Total</b>				<b>201691.93</b>	<b>12.43%</b>

"Attachment C"



-  BUFFER
-  PROPERTY\_OWNER
-  SUBJECT\_TRACT

**PETITION**  
**CASE#: C14-2017-0042**



This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

1" = 200'

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



## PETITION

Date: May 5, 2017













File Number: C14-2017-0042

Address of Re-zoning Request: 6610 McNeil Drive/12602 Blackfoot Trail

To: Austin City Council

We, the undersigned owners of property affected by the requested zoning change described in the referenced file, do hereby protest any change of the Land Development Code which would zone the property to any classification other than LR-CO/SF-2.

We protest the requested zoning change because the change (1) would permit the sale of alcohol from a property adjacent to a daycare and neighborhood residences, (2) is unnecessary to permit reasonable business uses of the property, (3) would not satisfy any public need, (4) would set an undesirable precedent for other properties in the neighborhood surrounding the property, (5) would not allow for a reasonable use of the property, (6) would not promote compatibility with adjacent and nearby uses and would result in detrimental impacts to the neighborhood character, (7) would not promote a transition between adjacent and nearby zoning districts, (8) would not promote the policy of locating retail near the intersections of arterial roadways, and (9) would not promote any clearly identified community goal.

<u>SIGNATURE</u>	<u>PRINTED NAME</u>	<u>ADDRESS</u>
	Rhonda Paver	1910 Justin Lane ✓
	JOHN TRENHOLM	7006 S. SIOUX ✓
	Glen McGuire	12609 Blackfoot Trl
	DAVID A. ROBERTS	12607 BLACK FOOT TR ✓
	PAMELA S. ROBERTS	12607 Blackfoot Trl ✓
	SCOTT PECH	7005 S. SIOUX TR ✓
	CHAD STEPHENS	7010 S SIOUX TR
	Kodi Stephens	7010 S. Sioux Trail 78729
	Linda King	7008 S. SIOUX 78729
	LINDA KING	7008 S. SIOUX 78729
	ABEL GALAVIZ	7009 S. SIOUX 78729 ✓
	Maria R. Galaviz	7009 S. Sioux 78729 ✓

Date:

  
LINDA TRENHOLM

Contact Name: Jay Clendenin

Phone Number: 903-744-0406

Linda Trenholm

7007 South Sioux 78729



**Stepping Stone  
SCHOOL**

*Premier Private Education*

**June 1, 2017**

**AUSTIN, TX:**

1710 Richcreek Rd. 78757  
8419 Bowling Green Dr. 78757  
8121 Shoal Creek Blvd. 78757  
6616 McNeil Dr. 78729  
9914 Woodland Village Dr. 78750  
12301 Hymeadow Dr. 78750  
7700 West Parmer Ln. 78729  
2001 Wells Branch Pkwy. 78728  
1007 E. 40th St. 78751  
9405 Brodie Ln. 78748  
9325 Alice Mae Ln. 78748

**LEANDER, TX:**

225 Block House Dr. 78641

**KYLE, TX:**

4624 Ratcliffe Dr. 78640  
1020 Lightfoot St. 78640

**ROUND ROCK, TX:**

7601 O'Connor Dr. 78681  
2301 N. A.W. Grimes Blvd. 78665  
651 Teravista Pkwy. 78665

**COLLEGE STATION, TX:**

900 University Oaks Blvd. 77840  
205 Rock Prairie Rd. 77845

**ADMINISTRATIVE OFFICE:**

1910 Justin Ln. 78757  
(512) 459-0258  
Fax (512) 467-1824

[www.SteppingStoneSchool.com](http://www.SteppingStoneSchool.com)

**Planning & Zoning Dept.  
c/o Ms. Sherri Sirwaitis – Case Manager  
505 Barton Springs Rd.  
Austin, TX 78704**

**Re: Case Number: 2017-042740 ZC or C14-2017-0042; Zoning/Rezoning**

**Dear Ms. Sirwaitis,**

**After discussions with the property owner, Mr. Birgani, where he indicated he would not seek a zoning classification that allows for the sale of alcohol, we withdraw our formal opposition to the pending application.**

**If you have any questions, please feel free to contact me.**

**Sincerely,**

**Rhonda Paver**



## MEMORANDUM

**TO:** Rodney Gonzales, Director, Development Services Department  
**FROM:** Rob Spillar, PE, Director, Austin Transportation Department  
**DATE:** July 26, 2017  
**SUBJECT:** 6610 McNeil Drive (C14-2017-0042) ROW Waiver Request

---

The *6610 McNeil Drive zoning case (C14-2017-0042)* concerns the property located along the northwest curb of McNeil Drive and Blackfoot Trail. The existing Right-of-Way (ROW) along McNeil Drive in this section is approximately 100 feet and exists as a MAD4.

In accordance with the City of Austin's *Land Development Code (LDC) §25-6-55, Dedication of Right-of-Way*, the City may determine that all or a portion of Right-of-Way is needed to accommodate the estimated traffic generated by a proposed development based on LDC §25-6-51, *Reservation of Right-of-Way*. The *2025 Austin Metropolitan Area Transportation Plan (AMATP)* is the City's adopted "Transportation Plan" mentioned in LCD §25-6-51.

The *AMATP* designates this section of McNeil Drive to be expanded to a Major Arterial Divided 6-lane roadway (MAD6), with a required ROW of 140 feet. This is a standard cross-section in the *Transportation Criteria Manual (TCM)* for a MAD6. By these standards, the applicant would normally be required to dedicate 70 feet from the centerline of McNeil Drive.

The applicant may be granted an administrative variance from the dedication requirements under the Austin City Code Section 25-6-86;

(A) The director may grant a variance from the dedication requirements of Section 25-6-55 (Dedication of Right-of-Way) if the director determines that the requirements:

- (1) place an undue hardship on the property owner because of special circumstances applicable to the property; or
- (2) render the property unsuitable for an economically feasible use.

**Recommendation:**

Austin Transportation Department (ATD) staff did not find the dedication requirements placed an undue hardship on the property or render the property unsuitable for an economically feasible use. The Director has determined that 57 feet of ROW dedication is required from the existing centerline of McNeil Drive to accommodate the required ROW for a MAD 4 at 114 feet, however the Director has determined that Right of Way dedication is deferred site plan.

CC: Annick Beaudet, Cole Kitten, Danielle Morin, Andrew Linseisen, Sangeeta Jain, Katie Wettick

**Sirwaitis, Sherri**

---

**Subject:** FW: Requesting official city staff meeting for rezoning Case number C14-2017-0042

**From:** Wettick, Katie

**Sent:** Wednesday, July 05, 2017 9:07 AM

**To:** Sirwaitis, Sherri; Shaw Hamilton; cyrus\_birgani

**Cc:** Jain, Sangeeta

**Subject:** RE: Requesting official city staff meeting for rezoning Case number C14-2017-0042

Good Morning Shaw,

TR2, regarding access to McNeil Drive can be deferred to time of site plan. I will edit my comments to reflect that, just keep in mind, that should this site come in for development with a site plan, there is not sufficient frontage for a driveway to be located on McNeil.

Additionally, as I have explained previously, the ROW dedication requirement is determined by the Austin Transportation Department. I have forwarded them your waiver request and I will be in touch as soon as I hear back.

Please let me know if you have additional questions.

Best,

**Katie Wettick**

*Planner III, Transportation Review*

[City of Austin Development Services Department](#)

One Texas Center, 4th Floor

505 Barton Springs Road

Office: 512-974-3529



---

**From:** Sirwaitis, Sherri

**Sent:** Monday, July 03, 2017 9:17 AM

**To:** Shaw Hamilton; [cyrus\\_birgani@](#)

**Cc:** Wettick, Katie; Jain, Sangeeta

**Subject:** RE: Requesting official city staff meeting for rezoning Case number C14-2017-0042

Hi Shaw,

If you and your client have issues with the prohibition of access to McNeil Drive or with the dedication of right-of-way for McNeil Drive, then you will need to discuss this with the Transportation reviewer. These conditions came from the Transportation review division in the Development Services Department. I am not at liberty to change them in the staff's recommendation. As we discussed before, you may meet with Katie Wettick or Sangeeta Jain to see if these conditions can possibly be deferred.

Transportation Planning - Katie Wettick - 512-974-3529



- TR1. The Austin Metropolitan Area Transportation Plan calls for a total of 140 feet of right-of-way for McNeil Drive. If the requested zoning is granted, then 70 feet of right-of-way should be dedicated from the existing centerline of McNeil Drive in accordance with the Transportation Plan. [LDC, Sec. 25-6-51 and 25-6-55).
- TR2. If the requested zoning is granted, it is recommended that access to McNeil Drive be prohibited as a condition of zoning because 200 ft of frontage is required for a site to have access to a major arterial.
- TR3. According to the Austin 2014 Bicycle Plan approved by Austin City Council in November, 2014, a bike lane is recommended for McNeil Drive.
- TR4. Per Ordinance No. 20170302-077, off-site transportation improvements and mitigations may be required at the time of site plan application.
- TR5. A Traffic Impact Analysis shall be required at the time of site plan if triggered per LDC 25-6-113. LDC, Sec. 25-6-113.
- TR6. A Neighborhood Traffic Analysis is deferred to time of site plan. At time of site plan a neighborhood traffic analysis will be required if triggered per LDC 25-6-114. LDC, Sec. 25-6-114.
- If the projected number of vehicle trips generated by the project exceeds the vehicle trips per day generated by existing uses by at least 300 vehicle trips per day;
- TR7. Existing Street Characteristics:

Name	ROW	Pavement	Classification	Sidewalks	Bike Route	Capital Metro (within ¼ mile)
McNeil Drive	100 ft	60 ft	MAD 4	No	No	No
Blackfoot Trail	60 ft	40 ft	Neighborhood Collector	Yes – Eastern Side Only	No	No

Thank you,

***Sherri Sirwaitis***

*City of Austin*

*Planning & Zoning Department*

[sherri.sirwaitis@austintexas.gov](mailto:sherri.sirwaitis@austintexas.gov)

512-974-3057(office)

---

**From:** Cyrus Birgani []

**Sent:** Saturday, July 01, 2017 1:51 PM

**To:** Sirwaitis, Sherri

**Cc:** Cyrus Birgani; Shaw Hamilton

**Subject:** Requesting official city staff meeting for rezoning Case number C14-2017-0042

Date: June 29<sup>th</sup>, 2017

To: The Case Manager Sherri Sirwaitis,

Zoning case# C14-2017-0042

Case manager: Sherri Sirwaitis

Phone# (512) 974-3057

From: The Property Owner

Abraham Birgani

Phone# (512) 998-2525

Owner Consultants:

Shaw Hamilton

Phone# (512) 791-0778

For the third time, I would like to set up a meeting with you and city staff prior to your final presentation of the ZAP to the planning commission on July 14<sup>th</sup>, 2017. I do not understand the basis for your zoning recommendation, nor do I understand why LDC, Sections 25-6-51 and 25-6-55 apply to me since I am not submitting a new site plan or subdivision plan. Even if your rezoning recommendation was acceptable to me, it would be worthless with the restriction on access from McNeil and a taking of an additional 20 feet of my property. Because of my confusion, I have consulted with a seasoned attorney who recommended that we meet before July 14<sup>th</sup>, 2017. I do not want to proceed with this process without professional assistance and want to avoid a legal dispute. We have made some progress in this case, and I am hopeful that we can resolve the remaining issues in a constructive manner that best serves the interests of all parties concerned. I look forward to your prompt response so we can schedule a meeting.

Sincerely,

Abraham Birgani

512-998-2525

**Sirwaitis, Sherri**

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**Subject:** FW: Case number C14-2017-0042 for Abraham Birgani rezoning property  
**Attachments:** Abraham Birgani property rezoning Case Number C14-2017-0042 .docx

**From:** Cyrus Birgani []  
**Sent:** Wednesday, May 24, 2017 2:30 AM  
**To:** Sirwaitis, Sherri  
**Cc:** Cyrus Birgani; Shaw Hamilton  
**Subject:** Case number C14-2017-0042 for Abraham Birgani rezoning property

Dear Sherri,

Mr. Shaw Hamilton my consultant has forward your email to me. unfortunately I read that you and staff recommending LR-MU-CO for both lots. For your information this is one lot not two lots which unfairly divided into two worthless tracts during last rezoning about 19 years ago. I CAN NOT accept any zoning less than CS-MU due to fact that I need to open my business at my property. I hope you take time and review them carefully with other staff member and understand my situation and treat me like other properties owner around me which they have rezoned their property base on their businesses needs. I will be there to bring you a hard copy of the attached file and discuss it more with you.

Sincerely,

Abraham Birgani

To: The Case Manager Sherri Sirwaitis, City of Austin staff and planning commission

Zoning case# C14-2017-0042  
Case manager: Sherri Sirwaitis  
Phone# (512) 974-3057

From: The Property Owner  
Abraham Birgani  
Phone# (512) 998-2525

Owner Consultants:  
Shaw Hamilton  
Phone# (512) 791-0778

Subject: Rezoning of lot2 of Indian oaks 2 subdivision from LR-CO/SF2 to CS-MU

The Lot2 of Indian Oakes 2 Subdivision has two addresses:

1. Address from McNeil Drive side: 6610 McNeil Dr. Austin TX. 78729
2. Address from Blackfoot Trail side: 12602 Blackfoot Trail Austin TX. 78729

Please see following very important information about the property (lot2):

- 1 Indian Oakes 2 Subdivision is in Williamson County Texas
- 2 Indian Oakes 2 Subdivision is comprised of 4 properties (or four lots):  
Lots 1, 2, 3 & 4. Please see [Page 8 for this legal document](#)
  - a. For your convenience, I highlighted the lot 1, 2, 3 and 4 of Indian Oaks Subdivision on the notice of Case # C14-2017-0042 for lot2.  
[Please Page 12](#)
- 3 **Since 1985, all four lots( Lots 1, 2, 3 & 4) of Indian Oakes 2 Subdivision are no longer restricted to be used for residential purposes only and may be used for any lawful purpose. There is not any deed restriction on any of the four lots of Indian Oakes 2 Subdivision. Please see page [Pages 9 and page 10 for this legal document](#)**

- 4 Over 27 years ago on December of 1989, I had purchased Lot2 for developing it for commercial use. Prior to purchasing the property from the previous owners, Mr. Richard A. Bouton and Mrs. Diane C. Bouton, I required them to correct the error on the property (lot2)'s building line to allow me with enough space for a commercial building and parking lot. Please see [Page 11 for this legal document](#)
- 5 1990 - I received a site plan exemption from the City of Austin because my property (lot2) was in Williamson County. I also received electrical and plumbing permits from the City of Austin as well.
- 6 1991 - I hired a contractor and started construction of a 25 feet by 60 feet commercial building on the lot2 for commercial use.
- 7 1991 to 1994 - The hired contractor abandoned the commercial building project before completion. Unfortunately, this caused major delay in completing the project. I was forced to take the contractor to court for my losses, which I won, but the contractor filed bankruptcy before I could collect on the ruling. However, I managed to complete the building project by myself.
- 8 1995 to 1996 – I met with Mr. Carl McClendon, Mr. Shaw Hamilton from City of Austin and Mr. Joe England from Williamson County to obtain a permit for constructing a commercial parking lot for my completed commercial building on lot2.
- 9 1997 (during first quarter) – Sales tax permit issued, merchandise (Persian rugs/carpets) received and beauty salon license issued.
- 10 1996 to early 1997 –Searched and hired IT Gonzales Civil Engineer to draw site plan for commercial parking lot and water quality filtration/retention system.
- 11 July 1997 – Permit for waste water line approved and installed on the property by City of Austin.
- 12 December 1<sup>st</sup> 1997 - The site plan approved by the Texas Natural Resource Conservation Commission was received.

- 13 December 31<sup>st</sup>, 1997 – Approved site plan for parking lot and water filtration/retention system on Lot2 in the Indian Oakes 2 Subdivision, City of Austin.
- 14 December 1997 – Hired a contractor for construction of parking lot and water quality filtration/retention system on my property (lot2) per the approved site plan of City of Austin.
- 15 December 31<sup>st</sup>, 1997 - City of Austin annexed Indian Oakes 2 Subdivision and other properties in nearby Indian Oakes Subdivision.  
**\*\*Please note, these are two different subdivisions.\*\***
- 16 Prior to annexation the neighborhood did not have the rights to stop my commercial development. It appears to me after annexation the City of Austin took my rights away to develop my property as I see fit and gave it to the neighborhood.
- 17 Although my commercial building project was 100% completed a few years prior to annexation, on March 20th, 1998 while I was more than 40% completed with the parking lot and the water filtration/retention system, the project was stopped due to neighborhood complaints by City of Austin code enforcer, Paul Tomasovic.
- 18 Unfortunately, in the following weeks of stopping my project by the neighbors and code enforcer Paul Tomasovic from the City of Austin, the city revoked all my approved permits and site plans forcing me to rezone my property.
- 19 In 1998, I forced to submit an application for GR land development code for all of Lot 2. During the rezoning process, David Sullivan from the zoning planning commission divided my property into two tracts (tract 1 and tract 2) against my wishes, which made my property worthless. Mayor of Austin Kirk Watson, sided with the neighborhood and my GR land development codes were denied and I was instead given a SF2 for tract 1 and the highly restricted LR-CO for tract 2 with very few options. Additional restrictions including building height and hours of operation were also imposed.
- 20 The outcome of these heavy restrictions made my property worthless, causing great monetary loss and emotional stress rendering my property

useless to me and my purpose for owning and purchasing this property during the last 27 years.

- 21 During the past 27 years, I was able to lease the property for a total of six years. From 2002 to 2005 it was leased to Salon for Kids and from 2008 to 2011 it was leased to Thrifty Nifty (sales of second hand household items.) For more than 21 years, the building has been vacant. The money I have made off the property has barely been enough to cover the taxes and repair on the building.
  
- 22 I am a Mechanical engineer with many years of experience in equipment engineering. I would love to use my equipment background and run a business on my property offering those types of services but the restrictions under the LR-CO land development code does not allow me to open anything in my field. This would include repair and services, such as AC, Auto, electronic prototype assembly, equipment testing, equipment repair services and equipment sales all prohibited under the LR-CO code. The CS-MU land development codes would allow me to run my business from my property and there is a property within 200 feet of my property that recently zoned by City of Austin to CS-CO. Therefore, like everyone else, I have to have CS-MU zoning to open my own business.
  
- 23 Currently in 2017, there are commercial properties within 200 feet of lot 2 in the Indian Oakes 2 subdivision. These properties are zoned with the following land development codes:
  - a. W/LO-CO (Case# C14-2011-0046, DAC International) This is Lot 4 of Indian Oakes 2 subdivision.
  - b. CS-CO (Case# C14-98-0060, Johnson Custom Pools and ADCO Printing Company)
  - c. LI across from the property Fashion Forms factory, Ubox, Glover Logistics and SabRex, Megladon and Research park (Flex corporation, Cisco system, Nokia, FCOA, Flex, HPI, Canon, Liberty mutual RW incorporated, Aurigo, New port and many others) Cisco system, Nokia
  - d. Lot 3 of Indian Oakes 2 subdivision is Stepping Stone private daycare center.



**\*\* As you see, I am asking for CS-MU which is very compatible with the businesses surrounding Lot 2.\*\***

- 24 Within a 1 mile area of the property Lot 2 along McNeil Rd. there are more than 50 established businesses, such as:
  - a. Auto-related businesses > BMW major car dealer/part/service, Lamb Auto, Advanced Auto Parts, Car Caliber Collision and Foundation auto repair
  - b. Convenience stores with gas station> HEB grocery, Wag-A-Bag, Circle K,
  - c. Major Grocery> HEB Grocery with gas station
  - d. Banks > Wells Fargo
  - e. Restaurants > Sonic, Jack in the Box, Firehouse Subs, Wendys, Cajuan Pizza place and Smokey Mo's BBQ
  - f. Bars > The Tank bar and grill
  - g. Liquor store> DEBS liquor
  - h. Pet Shop > Balconi Animal Hospital, Taurus Academy
  - i. Car Wash > County Car Wash
  - j. Major storage> Extra storage
  - k. Many medical offices
  - l. Fence factory
  
- 25 Although I am in the Indian Oakes 2 subdivision, since 1997 I have been trying very hard to work with the Indian Oakes subdivision, which is a separate neighborhood, to address their concerns regarding the zoning of my property. What I have presented in this documentation is based in fact and reality. All neighborhood prejudice aside, it is time to put an end to what appears to be a compelling drama. The Indian Oakes Neighborhood Association is deplorable. They have hindered my efforts to rezone my property into something viable for me.
  
- 26 Please see the following two examples of prejudice from the Indian Oakes Neighborhood Association toward me:
  - a. The property, Case# C14-98-0060, in Indian Oakes subdivision, the size of this property is also twice the size of mine. This undivided



property, which has been rezoned with CS-CO, is fully supported by the same neighborhood association that has opposed the rezoning of my property. What is the logical reasoning behind this prejudice and opposition? Please see [Page 13](#)

- b. Lot 4 of Indian Oakes 2 subdivision, Case# C14-2011-0046, the size of this property is almost twice the size of mine. This undivided property, which has been rezoned with W/LO-CO, is fully supported by the same neighborhood association that has opposed the rezoning of my property. What is the logical reasoning behind this prejudice and opposition? Please see [Page 14](#)

27 In April 2017, I have submitted an application for rezoning of my property (Lot 2), Case# C14-2017-0042, from LR-CO & SF2 to CS1-MU. I am asking the present City of Austin staff, planning commission, and city council members to treat me fairly like the commercial property owners around me, which you have rezoned recently and in past. Please correct the previous unfair zoning of my property and remove all other restrictions including limited height of building, hours of business operations and reinstate my original right to my property, which I could use it for any viable and lawful business purposes.

28 On May 4th, 2017, I met with the neighborhood to discuss my previous intent to rezone my property to CS1-MU. One of the allowed business options under CS-1 zoning is alcohol sales, which was their primary concern and focus of discussion. I stated to the neighborhood association during that meeting that I would reconsider CS1-MU zoning and would accept CS zoning instead, which does not allow alcohol sales. The CS-MU zoning code change has already been submitted to the City of Austin case manager, and is now in the process of informing everyone about our agreement to this change.

29 Please I have additional information, pictures and documents for support in rezoning of Lot 2 in Indian Oakes 2 subdivision to CS-MU.

30

31 Please use this following link for a satellite of the businesses around Lot 2 of Indian Oakes 2 subdivision along McNeil Dr. Please copy/past the following link to your google search see for yourself.

<https://www.google.com/maps/place/6610+McNeil+Dr,+Austin,+TX+78729/@30.4389222,-97.7559712,96m/data=!3m1!1e3!4m5!3m4!1s0x8644cd1c4fd10981:0x8deecfea8fcdc391!8m2!3d30.4389376!4d-97.7559621>

Sincerely,  
Abraham Birgani,  
12602 Blackfoot Trail Austin Texas 78729  
Phone# 512-998-2525

Legal Document 1, September 19<sup>th</sup>, 1977 creation of Indian Oaks 2 Subdivision

Page 8 of 8

3287

C8 5-77-149

See Amended Plat of Lots 2, 3 & 4  
Cub. J. Slide 264

SCALE: 1"=100'

A = 90.15'  
B = 1.5. FND.  
C = 72.91'  
D = 1.5. SBT  
E = 23.88'  
F = 31.31'

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LOCATION

INDIAN OAKS 2

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Vol 1186-361

ASSIGNMENT OF RESTRICTIONS  
**18533**

STATE OF TEXAS      §  
COUNTY OF WILLIAMSON      §

WHEREAS, by Deed recorded in Volume 500, Page 496, of the Deed Records of Williamson County, Texas, a copy of which is attached hereto as Exhibit "A", ROBERT FLOYD DAVIS and wife, ALICE DAVIS, and BEULAH DAVIS, as Grantees, did convey to ROBERT E. HILLEGAN and wife, ANNIE HILLEGAN, as Grantees, those six (6) tracts of land situated in Williamson County, Texas, as are more fully described on Exhibit "A"; and

WHEREAS, BEULAH DAVIS is now deceased and DIANA EICHENBACH, joined herein by her husband, DONALD L. EICHENBACH, is her only heir; and

WHEREAS, ELAINE BARNES, wife of DALE BARNES, is now deceased; and

WHEREAS, RICHARD BOUTCH and wife, DIANE BOUTCH, CRAIG E. SHIMPERT and wife, BARBARA SHIMPERT, DALE BARNES and FRANK C. WOLCHICK, JR., are successors in title to portions of the hereinabove referenced property; and

WHEREAS, the above named HILLEGANS, BOUTCHS, BARNES, SHIMPERTS and WOLCHICK constitute all of the parties with any interest in and to the property described on Exhibit "A"; and

WHEREAS, the Deed attached as Exhibit "A" contains certain restrictions restricting the use of the property for residential purposes only, and the parties hereto now desire to amend said restrictions to permit any lawful use;

NOW THEREFORE, for and in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree that the restrictions imposed upon the property are hereby amended and modified to provide that the property is no longer restricted to use for residential purposes only and may be used for any lawful purpose.

EXECUTED this 21<sup>st</sup> day of April, 1985.

ROBERT E. HILLEGAN	ANNIE HILLEGAN
DIANE BOUTCH	DONALD L. EICHENBACH
RICHARD BOUTCH	DIANE BOUTCH
CRAIG E. SHIMPERT	BARBARA J. SHIMPERT
FRANK C. WOLCHICK, JR.	DALE BARNES

STATE OF TEXAS      §  
COUNTY OF WILLIAMSON      §

This instrument was acknowledged before me on April 21, 1985, by ROBERT E. HILLEGAN and wife, ANNIE HILLEGAN.

NOTARY PUBLIC, State of Texas  
My Commission Expires: 1-1-87

OFFICIAL RECORDS  
WILLIAMSON COUNTY TEXAS

Please see the following page for more information on this legal document and my legal right to use my property

Please note: the last paragraph in this legal document clearly states that since 29 days of April, 1985, all restrictions on all LOTS including LOTS 1, 2, 3 & 4 of Indian Oaks 2 subdivision have been removed and the property is no longer restricted to be used for residential purposes only and may be used for any lawful purpose.

1186-361

**INSTRUMENT OF RESTRICTIONS**  
18533

STATE OF TEXAS )  
COUNTY OF WILLAMETTE )

KNOW ALL MEN BY THESE PRESENTS,

MURRAY, by deed recorded in volume 200, Page 484, of the 1984 Records of WILLAMETTE COUNTY, Texas, a copy of which is attached hereto as Exhibit "A", RICHARD FLORES and wife, ALICE FLORES, and MICHAEL DAVIS, as Grantees, did convey to RICHARD E. MILLER and wife, ANNE MILLER, as Grantees, those six (6) acres of land situated in Willamette County, Texas, as are more fully described in Exhibit "B", and

WHEREAS, RICHARD FLORES is now deceased and ALICE FLORES, Jointed herein by her husband, RICHARD E. FLORES, is her only heir; and

WHEREAS, ALICE FLORES, wife of RICHARD FLORES, is now deceased; and

WHEREAS, RICHARD FLORES and wife, ALICE FLORES, CHARLES E. FLORES and wife, BARBARA FLORES, DALE FLORES and FRED C. MILLER, JR., are Grantees in title to portions of the hereinabove described property; and

WHEREAS, the above named MILLER, FLORES, FLORES, FLORES and MILLER constitute all of the parties with any interest in and to the property described in Exhibit "B"; and

WHEREAS, the deed attached as Exhibit "A" contains certain restrictions restricting the use of the property for residential purposes only, and the parties hereto now desire to amend and modify to provide any lawful use;

NOW THEREFORE, for and in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree that the restrictions imposed upon the property are hereby amended and modified to provide that the property is no longer restricted to use for residential purposes only and may be used for any lawful purpose.

EXECUTE this 11 day of April, 1985.

STATE OF TEXAS )  
COUNTY OF WILLAMETTE )

Witness my hand and seal of office this 11 day of April, 1985, at Dallas, Texas.

Notary Public in and for the State of Texas

STATE OF TEXAS )  
COUNTY OF WILLAMETTE )

This instrument was acknowledged by and on behalf of RICHARD E. MILLER and wife, ANNE MILLER, as Grantees, on this 11 day of April, 1985, at Dallas, Texas.

NOW THEREFORE, for and in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree that the restrictions imposed upon the property are hereby amended and modified to provide that the property is no longer restricted to use for residential purposes only and may be used for any lawful purpose.

On 10-23-1989, building lines on Lots 2, 3, and 4 of Indian Oakes 2 Subdivision was corrected and after this correction, I purchased the lot2 for developing it for commercial use.

[illegible]



## ZONING

Case#: C14-2017-0042

 Subject Tract Pending Case Zoning Boundary

———— Railroads

A horizontal number line with arrows at both ends. It is marked with '0' at the left end and '200' at the right end. A solid vertical tick mark is placed at the midpoint, labeled '100'. The region between 0 and 100 is shaded in light blue.

$$1'' = 200'$$

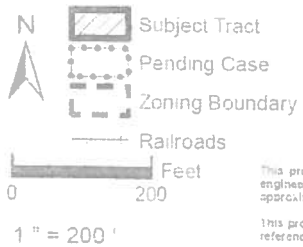
product is for informational purposes and may not have been prepared for or be suitable for (e.g.) engineering or surveying purposes. It does not represent an on-the-ground survey and represents only the estimate relative location of property boundaries.

This product has been produced by the Planning and Zoning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



Created: 4/19/2017

Case#: C14-2017-0042



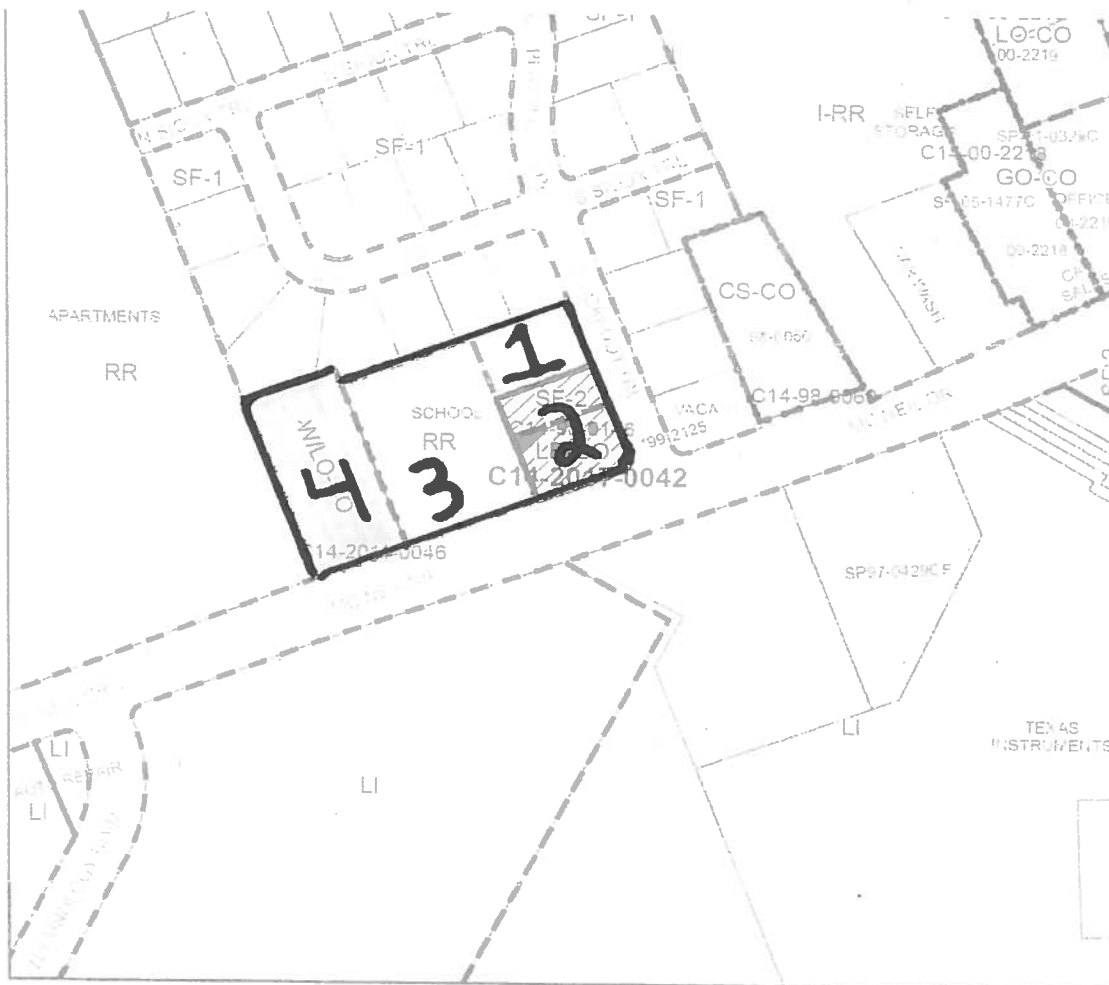
This product is for informational purposes and may not have been prepared for or be suitable for legal engineering or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by the Planning and Zoning Department for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



Created: 4/19/2017





### ZONING

Case#: C14-2017-0042



1" = 200'

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Created: 4/19/2017

## PUBLIC HEARING INFORMATION

This zoning/rezoning request will be reviewed and acted upon at two public hearings: before the Land Use Commission and the City Council. Although applicants and/or their agent(s) are expected to attend a public hearing, you are not required to attend. However, if you do attend, you have the opportunity to speak FOR or AGAINST the proposed development or change. You may also contact a neighborhood or environmental organization that has expressed an interest in an application affecting your neighborhood.

During its public hearing, the board or commission may postpone or continue an application's hearing to a later date, or may evaluate the City staff's recommendation and public input forwarding its own recommendation to the City Council. If the board or commission announces a specific date and time for a postponement or continuation that is not later than 60 days from the announcement, no further notice is required.

During its public hearing, the City Council may grant or deny a zoning request, or rezone the land to a less intensive zoning than requested but in no case will it grant a more intensive zoning.

However, in order to allow for mixed use development, the Council may add the MIXED USE (MU) COMBINING DISTRICT to certain commercial districts. The MU Combining District simply allows residential uses in addition to those uses already allowed in the seven commercial zoning districts. As a result, the MU Combining District allows the combination of office, retail, commercial, and residential uses within a single development.

For additional information on the City of Austin's land development process, visit our website: [www.austintexas.gov/planning](http://www.austintexas.gov/planning).

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

Case Number: C14-2017-0042

Contact: Sherri Sirwaitis, 512-974-3057

Public Hearing: June 6, 2017, Zoning and Platting Commission  
August 3, 2017, City Council

ABEL GALAVIZ

Your Name (please print)

7009 S. SIOUX TRAIL

Your address(es) affected by this application

Abel Galaviz

Signature

Daytime Telephone: 512-335-7082

06/01/2017

Date

☐ I am in favor  
☒ I object

Comments: RESONING WOULD BE IMPRACTICAL

AND NOT A GOOD THING TO DO FOR

OUR PEACEFUL COMMUNITY/NEIGHBOR-

HOOD. ALL SORTS OF ADDITIONAL

TRAFFIC WOULD MAKE OUR NEIGHBOR-

HOOD LESS DESIRABLE TO LIVE

IN. AS WE UNDERSTAND, THIS INDIVI-

DUAL WANTS TO OPEN A LIQUOR STORE

THERE. THE STEAKING STONE SCHOOL IS EXACT-

LY RIGHT NEXT DOOR. NOT GOOD.

If you use this form to comment, it may be returned to:

City of Austin

Planning & Zoning Department

Sherri Sirwaitis

P. O. Box 1088

Austin, TX 78767-8810

Written comments must be submitted to the board or commission (or the contact person listed on the notice) before or at a public hearing. Your comments should include the board or commission's name, the scheduled date of the public hearing, and the Case Number and the contact person listed on the notice.

**Case Number: C14-2017-0042**

**Contact: Sherri Sirwaitis, 512-974-3057**

**Public Hearing: June 6, 2017, Zoning and Platting Commission  
August 3, 2017, City Council**

Trudy Ross

Your Name (please print)

☐ I am in favor  
☒ I object

7001 S Sioux Trl

Your address(es) affected by this application

Trudy Ross

Signature

6-2-17

Date

Daytime Telephone: 512 335-7227

Comments: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If you use this form to comment, it may be returned to:

City of Austin

Planning & Zoning Department

Sherri Sirwaitis

P. O. Box 1088

Austin, TX 78767-8810

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**Case Number: C14-2017-0042**

**Contact: Sherri Sirwaitis, 512-974-3057**

**Public Hearing: June 6, 2017, Zoning and Platting Commission  
August 3, 2017, City Council**

CAROL E. BUTIERREZ

Your Name (please print)

☐ I am in favor  
☒ object

7004 S. SIOUX TRAIL

Your address(es) affected by this application

Carol E. Butierrez

Signature

5-30-2017

Date

Daytime Telephone: 512-554-6836

Comments: WILL BRING TOO MUCH TRAFFIC  
TO THIS AREA. IT'S A BAD  
INTERSECTION TO BEGIN WITH.

If you use this form to comment, it may be returned to:

City of Austin

Planning & Zoning Department

Sherri Sirwaitis

P. O. Box 1088

Austin, TX 78767-8810

RECEIVED

***Abraham Birgani***  
12606 Blackfoot Trail  
Austin, Texas 78729  
(512) 998-2525

AUG 23 2017

Planning & Zoning Department

---

**REQUEST FOR POSTPONEMENT**  
**TO CITY COUNCIL**

Date: August 23, 2017

To: Honorable Mayor Steve Adler  
and Honorable Members of the Austin City Council  
P.O. Box 1088  
Austin, Texas 78767-1088

Case Manager Sherri Sirwaitis,  
Zoning case# C14-2017-0042  
Phone# (512) 974-3057  
[Sherri.sirwaitis@AustinTexas.gov](mailto:Sherri.sirwaitis@AustinTexas.gov)

From: The Property Owner  
Abraham Birgani  
Phone# (512) 998-2525  
[Cyrus\\_birgani@yahoo.com](mailto:Cyrus_birgani@yahoo.com)

Dear Honorable Major Adler, Distinguished Council members and Ms. Sirwaitis,

On August 15, 2017, the Planning and Zoning Commission heard the above reference case and made a very creative and complex recommendation based upon the unique problems in my case.

First, my property consists of one building, the front part facing McNeil and the other side extending onto Blackfoot Trail. The property is located in Williamson County and was zoned entirely commercial with other 3 lots of Indian Oaks 2 Subdivision until the City of Austin annexed it in 1997 and drew an artificial property line through the middle of the building and imposed impossible conditions

Page 1/4

on the property rendering it commercially unfeasible. Due to such restrictions, it remained vacant for most of the past 20 years.

The main concern in the Planning and Zoning hearing was the issue of access from Blackfoot Trail. This issue was resolved with a recommendation agreed to by all parties to prohibit any access from or business activity on Blackfoot Trail. The Planning and Zoning Commission recommended zoning the front part of the building entirely facing McNeil, (approximately 1500 square feet), as GR with restrictions, but recommended the back portion (approximately 2388 square feet), of the same building as SF-2, which obviously prohibits *any* commercial use, even storage or offices, within the back portion of the same building, regardless of the fact that:

1. It will not have any business activity on Blackfoot Trail
2. It has the aesthetic of a residential property.
3. On Eastside, the two property owners immediately across from the Blackfoot side 12603 Blackfoot trail and 12605 Blackfoot Trail are not in opposition to commercial zoning of the extension of the building along Blackfoot Trail
4. On the Northside, 12604 Blackfoot trial property is belonging to myself (Abraham Birgani) and I am not in opposition of commercial rezoning.
5. On the Westside, private daycare is not in opposition to commercial zoning of the extension of the building along Blackfoot trail.
6. Not anyone of the property owners adjacent to the property for rezoning is in opposition of rezoning and total of 87.57% property effected by this rezoning either supporting or not in opposition.

The current Planning Commission recommendation still makes the property commercially unfeasible. But to make a proper presentation to this honorable council, I need to consult with a real estate appraiser to conduct an appraisal on the property with the current zoning recommendation and to conduct a cost analysis. Unfortunately, because of the high demand for appraisers and the time it will take to render a cost analysis, I am not able to properly inform this council of the relevant facts by August 31, 2017. I am certain that the Austin City Council would like to have all the pertinent facts before conducting a first reading.



Second, the Zoning Change Review Sheet of August 15, 2017 still provides the following recommendation: "In addition, if the requested zoning change is granted, then 57 feet of right-of-way should be dedicated from the existing centerline of McNeil Drive to accommodate the required ROW for a Major Arterial Divided 4-lane roadway at 114 feet." This was included despite assurances by staff that this provision was superseded by the ATD Memorandum of July 26, 2017, that provided in part: ". . .the Director has determined that the right of-way dedication is deferred site plan." Third, even with this modification, significant problems remain in the event that a new site plan must be submitted due to zoning changes or environmental issues. Finally, this issue in long run will cause the following issue for me which I need more time to resolve them with ATD:

1. The extensive concrete drainage/flood control system adjacent to Blackfoot required by FEMA and the City of Austin in the original site plan was designed to use the existing square footage of the entire parking area for overflow. The drainage/flood control system can only drain water at a fixed rate. Reducing the square footage of the parking area would require move to move the existing building back at least another 7 feet at a cost approaching \$1,000,000.00.
2. This drainage/flood control system (and parking lot overflow) was required as a part of his site plan. In 2002, Birgani built this system, costing approximately \$300,000.00. Please refer to the approved site plan permit number: SP-99-2171C, dated, 11/10/99.
3. ROW requirement would encroach 7 feet into the parking lot. This would eliminate one entire row of parking.
4. The compatibility standards also provide in part, "No structure may be built within 25 feet of the property line." Because the approved, existing drainage/flood containment structures are within 25 feet of the property line, which was approved by the city in 1999, this requirement must be removed or waived.

5. The compatibility standards also provide in part, "No parking or driveways are allowed within 25 feet of the property line." Please note that these standards apply *only* to driveways along the north, of the property, the existing driveway off McNeil is on the *south* of the property, therefore this standard does not apply. Even if it did, the original site plan allowed the placement of the existing driveway off McNeil within 25 feet of the property line, presumably as a part of the engineered drainage system, the imposition of this standard would also create similar problems to those addressed above.

I proposed a compromise: a ROW agreement of 50 feet from the center of McNeil Drive to the existing McNeil curb of his property, thus allowing me to preserve my existing parking and drainage/overflow and allowing the city and state to expand McNeil by another lane. Despite numerous phone calls and emails, there has been no response to proposal form ATD.

In short, it is my opinion that the imposition of these conditions is not only unreasonable, but constitute a regulatory taking of my property. I need some time to work with Austin transportation department to resolve this issue too.

Accordingly, I am respectfully request just one postponement for the first reading from August 31<sup>st</sup>, 2017 to October 5<sup>th</sup>, 2017. I look forward to your response. Also, please confirm that you receive my request and is accepted by you. Thank you!

Respectfully submitted,

Abraham Birgani

*Abraham Birgani*  
08/23/2017

# ON ALL SITE PLANS

ED

ordance with the released site  
ll require a site plan amendment  
nd Development Department; minor  
Building Plan Review Section at the

clude Building Code and Fire Code

of relocation, or damage to,

required at a later date.

d prior to an application for  
ed or Planning Commission approved

asphalt or concrete pavement prior  
driving surface.

center of the four-inch opening at  
The four-inch opening must face  
to six-foot setbacks from the  
within three feet of any  
must be totally unobstructed from the

fire protection facilities are installed  
shall include all surface access  
ade serviceable prior to and during  
ernative methods of protection, as  
vided, the above may be modified or

all be engineered and installed for  
vious/decorative paving within  
approved by the Fire Department.

with an individual capacity of 1.5  
stored or placed within ten feet of  
stible eave lines.

hall be registered with City of  
ected for final approval.

apparatus is 13 feet, 6 inches for

## PROPERTY OWNER

Abraham Birganl  
12602 Blackfoot Trail  
Austin, Texas 78729  
(512)391-5666

## LEGAL DESCRIPTION

Lot 2, Indian Oaks 2, part of the Wm. J. Baker Survey #10,  
Recorded in Plat Records, Cabinet J, Slide 264, of Williamson  
County, Texas.

## SITE PLAN NOTES:


1. Total site is 25,039 or 0.5748 acres.
2. Total area being developed is 17,289 S.F. = 0.397 acres.
3. Existing Impervious Cover
  - a. 1-Story Bldg.- 3888 s.f. 15.53%
  - b. Concrete flat work- 1073 s.f. 4.29%
  - Total Impervious Cover 4,961 s.f. 19.81%
4. Impervious Cover to Remain and New Concrete Pavement
  - a. 1 Story Bldg.- 3888 s.f. 15.53%
  - b. Existing Conc. flat work- 982 s.f. 3.92%
  - c. New Pavement- 7851 s.f. 31.36%
  - d. New Conc. flat work- 91 s.f. 0.36%
  - Total Impervious Cover 12,812 s.f. 51.17%
5. Increase in Impervious Cover: 7851 s.f. 31.36%
6. Limits of Construction (within property lines) - 13,130 s.f.

GARBAGE PICKUP: At Curb Side

RELATED CASES: NONE

## GENERAL CONSTRUCTION NOTES:

1. All new concrete work shall be constructed with 3000 p.s.i. concrete.
2. All excavated surplus material shall be hauled off by Contractor to approved Landfill.
3. All disturbed and regraded permeable areas shall be finished with 3' of approved fertile topsoil. Same areas shall be hydromulched. Watering will be done by Contractor. See re-vegetation notes on Sht. C5.
4. All pavement & sidewalk surfaces shall be hard-trowelled & finished with a medium coarse brush. Other exposed surfaces, i.e., vertical surfaces & curbs shall be grouted with a sand/cement mix & finished with a rubber float.
5. All finished concrete work shall be immediately sealed with a curing compound.
6. Following completion of concrete drive, the contractor shall barricade drive to assure that vehicular traffic does not enter drive. Barricades shall be maintained for 7 days.
7. Upon completion of the proposed site improvements and prior to the release of the certificate of occupancy or final inspection release by the city, the design engineer shall certify in writing that the proposed drainage and detention facilities were constructed in conformance with the approved plans.



**BUILDING**

151.00'

5.5' WOOD FENCE

5' B.L. \_\_\_\_\_  
5.5' WOOD FENCE

EXISTING RESIDENCE  
& IMPORT/EXPORT  
BUSINESS  
ONE STORY  
F.F.=914.32

~~EXISTING~~  
TWO CAR  
CONCRETE  
DRIVEWAY

TRACT  
SF-2

EXISTING  
SEPTIC  
FIELD  
TO BE  
ABANDONED  
BUILDING  
LAB

EXISTING ABAND  
-STORAGE BUILDING  
ON CONC. SLAB

EXISTING  
BEAUTY SHOP  
ONE STORY  
F.F.=914.16

LOT 2

TRACT 2

## ACCESSIBLE ROUTE

LR-CO

## CONCRETE PAVEMENT

10' FUTURE R.O.W.  
RESERVED AS PER SEC. 13-5-8

131.00

S70°57'00" W

N25°49'17"E  
C=28.47' A=31.68'

# BACK OF CURB

## AT BOW LINE

To: Honorable Mayor Steve Adler and distinguish Council member Member

**Zoning case# C14-2017-0042**

Case manager: Sherri Sirwaitis

Phone# (512) 974-3057

[Sherri.sirwaitis@Austintexas.gov](mailto:Sherri.sirwaitis@Austintexas.gov)

From: The Property Owner

Abraham Birgani

Phone# (512) 998-2525

**Subject: Rezoning of lot2 of Indian oaks 2 subdivision from LR-CO/SF2 to CS-MU**

The Lot2 of Indian Oakes 2 Subdivision has two addresses:

1. Address from McNeil Drive: 6610 McNeil Dr. Austin TX. 78729 and Address
2. from Blackfoot Trail: 12602 Blackfoot Trial Austin TX. 78729

**Please see the following important documentation about the property(lot2):**

- 1 Indian Oakes 2 Subdivision is in Williamson County Texas and is comprised of 4 properties or 4 lots (Lots 1, 2, 3 & 4). Dated September 19<sup>th</sup>, 1977. [See page 12 for this legal document](#)
- 2 **On April 29<sup>th</sup>, 1985**, all four lots of Indian Oakes 2 Subdivision per Amendment of Restriction #18833 are no longer restricted to be used for residential purposes only and may be used for any lawful purpose. [See page 13 for this legal document](#)
- 3 Over 27 years ago in December of 1989, I purchased Lot2 for developing it for commercial use. Prior to purchasing the property from the previous owners, Mr. Richard A. Bouton and Mrs. Diane C. Bouton, I required them to correct the error on the property's (lot2) building line to allow me with enough space for a commercial building and parking lot. Document dated September 23<sup>rd</sup>, 1989. [See page 14 for this legal document.](#)

#### 4 Please See History of the property prior to annexation:

- a) 1990 - **prior to annexation**, I received a site plan exemption from the City of Austin because my property (lot2) was in Williamson County. I also received electrical and plumbing permits from the City of Austin as well.
- b) 1990 to 1991 - **prior to annexation**, I hired a contractor, Charles E. Salisbury, and started construction on 25 feet by 60 feet additional commercial building on lot2 for commercial use.
- c) 1992 to 1995 – **prior to annexation**, Mr. Salisbury abandoned the commercial building project before completion. Unfortunately, this caused major delays in completing the project. I was forced to take the contractor to court for my losses, which I won, but the contractor filed bankruptcy before I could collect on the ruling. [Please see page 15 document. Reason for building project completion delay.](#)
- d) 1993, **Prior to annexation**, I managed to complete the commercial building project by myself. [Please see page 16 picture of the building.](#)
- e) 1995 to 1996 – **Prior to annexation**, I met with Mr. Carl McClendon, Mr. Shaw Hamilton from City of Austin and Mr. Joe England from Williamson County to obtain a permit for constructing a commercial parking lot for my commercial building.
- f) 1997 (first quarter) – **Prior to annexation**, merchandise Persian rugs, and computers) received and beauty salon license issued.
- g) May 1<sup>st</sup>, 1997 – **Prior to annexation**, sales tax permit issued for my company A-Mart Enterprises at 12602 Blackfoot Trail, Austin TX 78729. [Please see page 17.](#)
- h) 1996 to early 1997 – **Prior to annexation**, searched and hired IT Gonzales Civil Engineer to draw site plan for commercial parking lot and water quality filtration/retention system per City of Austin and Texas Natural resource conservation requirement.



- i) July 1997 – **Prior to annexation**, permit for waste water line and connection point approved and installed on the property by City of Austin.
  - j) December 1<sup>st</sup>, 1997 – **Prior to annexation**, the site plan approved by the Texas Natural Resource Conservation Commission was received.
  - k) December 31<sup>st</sup>, 1997 – **Prior to annexation**, the City of Austin approved site plan/development permit **No. SP-97-0439D** for parking lot and water filtration/retention system on Lot2 in the Indian Oakes 2 Subdivision. **Please see page 18**
  - l) **Prior to annexation**, please notice on approved site plan by City of Austin permit No. SP-97-0439D), name of my businesses (**Import/export business** and beauty salon. **Please see pages 18.**
  - m) December 1997 – **Prior to annexation**, I hired a contractor for construction of parking lot and water quality filtration/retention system on my property (lot2) per the approved site plan No. SP-97-0439D by the City of Austin.
- 5 **On December 31<sup>st</sup>, 1997 or January 1<sup>st</sup>, 1998 - City of Austin annexed Indian Oakes 2 Subdivision and other properties in Indian Oakes Subdivision. Please see after annexation the following history on the property:**
- a) March 20<sup>th</sup>, 1998, after annexation - Although my commercial building project was 100% completed a few years prior to annexation, while I was more than 40% completed with the parking lot and the water filtration/retention system, the project was stopped by City of Austin code enforcer, Mr. **Paul Tomasovic** due to neighborhood complaints.
  - b) Unfortunately, in the following weeks of stopping my project by the code enforcer Mr. Paul Tomasovic from the City of Austin, the city of Austin **revoked** all my approved permits including the approved site plan No. SP-97-0439D (dated December 31<sup>th</sup>,1997) and forcing me to rezone my property.

- c) In 1998, I was forced to apply for CS/GR land development code for all of Lot 2. My application was assigned to case manager, Mr. Christopher Johnson, and the City of Austin staff, which recommended a LR-CO designation on my property, failing to communicate with me during the process. Mr. David Sullivan from the zoning and planning commission worked with several of my neighbors, notably Mr. Pendleton (the man whose wife wanted to destroy my commercial building), and unfairly recommended the division of my small property into two smaller tracts (tract 1 and tract 2) against my wishes, which made my property worthless. Upon conclusion of several city council meetings, Mayor of Austin Mr. Kirk Watson sided with the neighborhood and my CS/GR land development codes were denied and I was instead given a SF2 for tract 1 and the highly restricted LR-CO for tract 2 with very few options. Additional restrictions including building height and hours of operation were also imposed. I believe my case manager, Mr. Christopher Johnson, and staff did not bother to review the legal documents that I submitted to them on many occasions, outlining my legal rights for developing my commercial property and instead of recommending a CS/GR code or exemption the property from rezoning, they recommended a highly restrictive LR-CO code for my property. The City of Austin staff and zoning and planning commission's recommendation of LR-CO was THE key decision that prevented me from getting a fair zoning (CS/GR) based on my legal rights to develop the property. CS/GR is compatible with other businesses in the surrounding area and along McNeil Dr.
- d) On November 10<sup>th</sup>, 1999, I was forced again by City of Austin to submit another site plan for approval which I had no other choice. Finally, after two 2.5 years delay, I received a new approved site plan permit number [SP-99-2171C](#), dated April 5<sup>th</sup>, 2000. [Please see page 19](#)
- e) In May 2002, I had developed the parking lot, water filtration and retention system based on new site plan specification and requirement and finally my parking lot project and water quality system were completed.

- f) The outcome of these heavy restrictions made my property worthless. Losing two businesses caused great monetary loss and emotional stress, rendering my property useless to me and my purpose for owning and purchasing this property during the last 27 years.
  - g) During the past 27 years, I was able to lease the property for a total of six years. From 2002 to 2005 it was leased to Salon for Kids, from 2008 to 2011 it was leased to Thrifty Nifty (sales of second hand household items), I could not open my business neither. For more than 21 years, the building has been vacant. The money I have made off the property has barely been enough to cover the taxes and some of the building repair and property taxes has increased more than 400%.
  - h) **Important Notice:** Prior to annexation, based on my legal right to develop my commercial property, City of Austin and the neighborhood did not have the legal right to oppose me. **It appears to me after annexation the City of Austin took my legal rights away to develop and use my commercial property as I see fit and gave it to the neighborhood.**
- 6 Now, 20 years later after the annexation, having seen so many nearby properties on McNeil Dr. zoned for LI, CS, W/LO and GR; In April 2017, I submitted an application for rezoning of my property (Lot 2), Case# C14-2017-0042, from LR-CO & SF2 to CS1-MU
- 7 On May 4th, 2017, **I met with the neighborhood** to discuss my previous intent to rezone my property to CS1-MU. One of the allowed business options under CS1 zoning-code is alcohol sales, which was their primary concern and focus of discussion. I stated to the neighborhood association during that meeting that I would reconsider CS1-MU zoning and would **accept CS-MU** zoning instead, which does not allow alcohol sales.
- 8 On May 16<sup>th</sup>, 17- The CS-MU zoning code change has been submitted to the City of Austin case manager, Ms. Sirwaitis, informing everyone about our agreement to this change.

- a) Stepping Stone school owner Rhonda Paver's attorney Kenneth Richey has been waiting on this written notice from the case manager regarding this change to CS-MU, in which they have agreed to then remove their opposition from the valid petition.
  - b) However, there is positive information, on June 1<sup>st</sup>, 2017 Ms. Rhonda Paver's Attorney, Kenneth Rickey, sent case manager Sherri Sirwaitis a signed PDF document stating her intentions to withdraw her formal petition. **Please see page 20 for Ms. Paver letter of withdrawing.**
  - c) **There is no adjacent property owner that opposes the rezoning of my property. Please see page 21.**
  - d) **There is no valid petition opposed to rezoning Please see page 22.**
- 9 Although I am in the Indian Oakes 2 subdivision, since 1997 I have been trying very hard to work with the Indian Oakes neighborhood, which is a separate subdivision, to address their concerns regarding the zoning of my property. What I have presented in this documentation is based in fact and reality. Although there has been push back and opposition from some neighbors, it is time to put an end to the unreasonable and illogical neighborhood opposition. **City officials need to ask the neighborhood, why do they have this negative opposition toward me but have supported other property owners in their rezoning efforts based on their business needs.**
- 10 Since my property was annexed by the City of Austin, the same neighborhood has used the City of Austin and hindered my efforts to rezone my property into something viable. **Please see the following few examples of opposition toward me, but support for others, from the Indian Oakes Neighborhood Association:**

- a) The property, Case# C14-98-0060, in Indian Oakes subdivision, the size of this property is also twice the size of mine. This undivided property, which all of this property has been rezoned with CS-CO, is fully supported by the same neighborhood association and city staff recommendation that has opposed the rezoning of my property. **What is the logical reasoning behind this bias and unfair opposition and why are the city officials supporting them?** Please see page 23 for location of this property relative to my property.
- b) Lot 4 of Indian Oakes 2 subdivision, Case# C14-2011-0046, the size of this property is about 1½ times the size of mine. This undivided property, which all of this property has been rezoned with W/LO-CO, is fully supported by the same neighborhood association and city staff recommendation that has opposed the rezoning of my property. Again, **what is the logical reasoning behind this bias and unfair opposition and why are the city officials supporting them?** Please see page 24 for location of this property relative to my property.
- c) The vacant lot, 12601 Blackfoot trail belong to Mehdi Zarchi and Elham Tarkashvand. There is a building on this lot which they have used for storing their air condition business parts for many years. Worth mentioning, this is also another example of this neighborhood bias against people like me. The neighborhood used the City of Austin to prevent these honorable and hardworking people from rezoning their property to CS based on their business need, then turned around and supported rezoning a big property next to theirs for CS-CO. **What is the logical reasoning behind this bias and unfair opposition and why are the city officials supporting them?**
- 11 During the last few months, I have submitted many legal documents to City staff and case manager Ms. Sherri Sirwaitis, to support my rezoning case # C14-2017-0042 and I ask that they now recommend my property be zoned for CS-MU with no restrictions which is very compatible with properties rezoned around my property along McNeil Drive, **but unfortunately, I am seeing history repeat itself.**

- 12 On Tuesday, May 30<sup>th</sup>, 2017, I had the chance to meet with case manager Ms. Sherri Sirwaitis, where she presented me with a zoning change review sheet which has been sent to Planning commission, Case# C14-2017-0042 Z.A.P. Date: June 6<sup>th</sup>, 2017.
- a) To my surprise June 6<sup>th</sup>, 2017 review sheet did not include or mention any of the documentation which presented my legal rights of the property. Yet again, they recommended the same LR-CO-MU land development code, **which I am strongly opposed to.**
  - b) Worth mentioning that finally, some of the document have been included in review zoning sheet, dated July 18<sup>th</sup>, 2017 by Ms. Sirwaitis (I appreciate that), for zoning and planning commission hearing.
  - c) On July 26<sup>th</sup>, 2017, I submitted more than 42 pages of documents to the case manager and requested to be included in zoning review sheet for August 15<sup>th</sup>, 2017 hearing, but she did not include any of them. **My question is, how can I get a fair hearing from the commissioners or City Council members without my documents to review? I hope those documents be included in Change review sheet for cit council hearing.**
- 13 In addition to the above recommendation by staff, which I am opposed to, the city transportation department has put new restrictions such as blocking access to McNeil Drive and taking additional ROW. This would place an undue financial hardship of more than \$1,000,000 in the long run on me and render the property unsuitable for any economically feasible use. I proposed a compromise to the ROW agreement of 50 feet from the center of McNeil Drive to the existing McNeil curb of the property, thus allowing me to preserve my existing city approved parking and drainage/overflow and allow the city and state to expand McNeil by another lane. (Worth mentioning that the city has already taken 10.5 feet ROW from my property). Despite numerous phone calls and emails and official mailings, there has not been a final resolution to my proposal. I am asking the city council for another postponement until I will be able to resolve these issues.



14 I have tried several times to correspond with the city staff and request a time to present my case to all staff, unfortunately my requests have been denied meeting all staff. **Per case manager Ms. Sherri Sirwaitis with her staff, their decision has been made based on my property is on an entrance street to the neighborhood.** However, there are many other properties along McNeil drive that are on entrances to a neighborhood that have been rezoned with a CS, GR or LI designation. Again, why have I been singled out with a LR-CO-MU recommendation? Which does not align with my business needs or compatible with facts on McNeil drive and make my make property viable for lease while others have CS, GR, LI. **Again, I would like the same fair rules applied to me and be shown equal opportunity on my legal right to my commercial property.** Please see the following examples proving my point that there are multiple properties along McNeil Dr. rezoned with a CS, GR, LI some of them located at the entrance of a neighborhoods:

- a) Corpus Christi Drive: 6748 or 6750 Corpus Christi Drive at the intersection of McNeil - This property was recently zoned as GR-CO at entrance of neighborhood, along with following streets.
- b) Dakota Ln.: 6410 McNeil Drive at the intersection of Dakota - This property was recently zoned as GR-CO.
- c) Within 200 feet of Blackfoot Trail: 6514 McNeil Drive- This property was zoned as CS-CO.
- d) Within 200 feet of my property and Blackfoot Trail: 6702 McNeil Drive - This property was zoned as W/L-CO
- e) 6810 McNeil Drive - This property was recently zoned as GR-CO.
- f) 6914 or McNeil Drive - of Los Indio's -This property is zoned as CS-CO.
- g) 7224 or 7308 McNeil Drive at the intersection of San Filipe - This property was recently zoned as GR-CO.
- h) 7701or 7318 McNeil Drive at the intersection of San Filipe - This property was zoned as GR-CO and CS-CO

- i) Along McNeil Drive and opposite side of my property, there are many properties which have been rezoned to LI, CS: BMW of Austin (CS zone), Building-A Taurus Academy CS-CO zone, Building-B Insurance CS-CO zone, Balcones Animal Hospital (LI-CO), Car Caliber Collision (Industrial), Foundation auto repair (Industrial), Lamb Auto (Industrial), Fashion Forms factory (LI zone), Ubox (LI zone), Glover Logistics (LI zone), SabRex (LI zone), Megladon (LI zone), and Research park including many companies that are all (LI zone).
- j) 6813 McNeil Drive was zoned LI
- k) 6819 McNeil Drive was zoned LI
- l) 6909 McNeil was zoned CS
- m) 7111 McNeil Drive was zoned CS
- n) 7113 McNeil Drive was zoned CS
- o) Finally, there are many properties zoned LI, LI-CO, CS or CS-CO, GR and GR-CO along and down McNeil Drive. Please see page 25 zoning map of Austin.
- p) **Note: Please as you see, City of Austin Staff's recommendation is NOT based with facts on the ground. If there is any exception to the rule, I want it applied to me as well based on equal opportunity and my legal right to my commercial property.**
- q) On August 15<sup>th</sup>, 2017, during Planning commission hearing, the planning commissioners has recommended GR\_MU\_CO for portion of the Lot2, although this is a step in right direction and I appreciate that, but unfortunately, again my small lot has been divided in two separate tracts by planning commission recommendation and tract1 stayed as SF2. This creates a major issue to operate any valuable business at this location due to lack of space.
- r) There is another main issue here, based on the city staff recommendation, if rezoning granted, then new ROW of 57 feet from

center McNeil drive will apply to the property. As a result, I will lose half of my parking space, part of my filtration-sedimentation-detention ponds and must move my existing commercial building back 7 more feet to comply with this condition. This makes my existing commercial building too small to operate any valuable business.

- s) I am asking the honorable city council members to be fair and support the rezoning of the entirety of Lot 2 in Indian Oakes 2 subdivision to GR/CS. I do have adjacent property 12604 Blackfoot on North side the property. This property can be used as barrier between commercial lot and the neighborhood.
- 15 I am a Mechanical engineer with many years of experience in equipment repair, modify, maintenance and sales. The machines that I have experienced on are like appliances that you will find in any home, just a little more precise and smaller. Although I am 69 years old now, I would like to use my equipment background and run a small business on part of my property offering those types of services, but the LR-CO-MU staff recommendation **does not** allow me to open anything in my field. This would include repair and services, such as AC, Auto, electronic prototype assembly, equipment testing, equipment repair, service, training and equipment sales all prohibited under the LR-CO code. **The CS-MU land development codes would allow me to run my business from my property**
- 16 Please see following Austin zoning maps, legal documents and pictures of properties along McNeil Dr. for support of CS-MU or CS/GR-MU zoning of my property. [Please see page 25 zoning Map.](#)

Sincerely,

Abraham Birgani  
Phone # 512-998-2525

**Legal document of Indian Oaks 2 Subdivision- September 19<sup>th</sup> 197**

[illegible]

**Legal document dated April 29<sup>th</sup> 1985-Lawfully property is commercial**AMENDMENT OF RESTRICTIONS

Vol 1186

18833

STATE OF TEXAS

§

KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF WILLIAMSON

§

WHEREAS, by Deed recorded in Volume 500, Page 496, of the Deed Records of Williamson County, Texas, a copy of which is attached hereto as Exhibit "A", RAYMOND FLOYD DAVIS and wife, ALINE DAVIS, and BEULAH DAVIS, as Grantors, did convey to ROSCOE E. MILLEGAN and wife, ANNIE MILLEGAN, as Grantees, those six (6) tracts of land situated in Williamson County, Texas, as are more fully described on Exhibit "A"; and

WHEREAS, BEULAH DAVIS is now deceased and DIANA EICHSTATDT, joined herein by her husband, DONALD L. EICHSTATDT, is her only heir; and

WHEREAS, ELAINE BARNES, wife of DALE BARNES, is now deceased; and

WHEREAS, RICHARD BOUTON and wife, DIANE BOUTON, CRAIG H. SHERPERT and wife, BARBARA SHERPERT, DALE BARNES and FRANK C. WOLCHICK, JR., are successors in title to portions of the hereinabove referenced property; and

WHEREAS, the above named MILLEGANS, BOUTONS, BARNES, SHERPERTS and WOLCHICK constitute all of the parties with any interest in and to the property described on Exhibit "A"; and

WHEREAS, the Deed attached as Exhibit "A" contains certain restrictions restricting the use of the property for residential purposes only, and the parties hereto now desire to amend said restrictions to permit any lawful use;

NOW THEREFORE, for and in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree that the restrictions imposed upon the property are hereby amended and modified to provide that the property is no longer restricted to use for residential purposes only and may be used for any lawful purpose.

EXECUTED this 29<sup>th</sup> day of April, 1985.

ROSCOE C. MILLEGAN  
ROSCOE C. MILLEGAN

ANNIE MILLEGAN  
ANNIE MILLEGAN

DIANA EICHSTATDT  
DIANA EICHSTATDT

DONALD L. EICHSTATDT  
DONALD L. EICHSTATDT

RICHARD BOUTON  
RICHARD BOUTON

DIANE BOUTON  
DIANE BOUTON

CRAIG H. SHERPERT  
CRAIG H. SHERPERT

BARBARA J. SHERPERT  
BARBARA J. SHERPERT

FRANK C. WOLCHICK, JR.  
FRANK C. WOLCHICK, JR.

DALE BARNES  
DALE BARNES

STATE OF TEXAS

§

COUNTY OF TEXAS

§

This instrument was acknowledged before me on APRIL 29, 1985, by



**Legal document dated: September 29<sup>th</sup> 1989-Removal of Building line**

On 10-23-1989, building lines on Lots 2, 3, and 4 of Indian Oakes 2 Subdivision was corrected and after this correction, I purchased the lot2 for developing it for commercial use.

[illegible]

dated: May 6<sup>th</sup> 1992-Reason for delay to complete building project

THE STATE OF TEXAS  
County of Travis

ABSTRACT OF JUDGMENT

I, AMALIA RODRIGUEZ-MENDOZA, Clerk of the District Court of TRAVIS County, Texas, do hereby certify that in the District Court of TRAVIS County, Texas, in a certain suit pending in the 200TH Judicial District Court, No. 9 2 0 3 1 0 7, wherein  
ABRAHAM BIRGANI  
IS  
, Plaintiff(s)  
and  
CHARLES SALISBURY, WHOSE BIRTHDATE AND DRIVER'S LICENSE NUMBER ARE  
NOT AVAILABLE TO THE CLERK,  
IS  
, Defendant(s)

the said  
PLAINTIFF, ABRAHAM BIRGANI  
recovered judgment against the said  
DEFENDANT, CHARLES SALISBURY, WHOSE ADDRESS APPEARS AS:  
1400 GLEN WILLOW COVE  
ROUND ROCK, WILLIAMSON COUNTY, TEXAS 78682

on the 6TH day, of MAY, 1992, for the sum of  
EIGHTY-NINE THOUSAND SEVEN HUNDRED THIRTY-TWO AND 44/100 (\$89,732.44) Dollars,  
with interest on said amount from the 6TH day of MAY, 1992, at the rate of 10 per cent per annum,  
until paid, and \$142.00 costs of suit.

Said judgment is of record in Vol. 2403 Page 007 Records of Said Court. Said judgment is entitled  
to following credits, to-wit: None.

There is now still due on said judgment \$89,732.44, with interest as hereinabove set out,  
and \$142.00 cost of suit.

Given under my hand and seal of office at Austin, Texas, this the 11TH day of MAY, 1992.

AMALIA RODRIGUEZ-MENDOZA  
District Clerk  
Travis County, Texas  
By Sandra Stewart  
SANDRA STEWART, Deputy  
9203107-

Original Copy  
AFTER RECORDING, PLEASE RETURN TO:  
Clint Parsley  
812 San Antonio #500  
Austin, Texas 78701

FILED  
1992 JUN -3 PM 12: 42  
DANA DE BEAUVOR  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS

A.J. STATE/FED. TAX LIENS  
TRAVIS COUNTY, TEXAS  
00686 0247

STATE OF TEXAS  
COUNTY OF TRAVIS  
I hereby certify that this instrument was FILED on  
the date and at the time stamped hereon by me; and  
was duly RECORDED, in the Volume and Page of the  
named RECORDS of Travis County, Texas, on

JUN 3 1992  
COUNTY CLERK  
TRAVIS COUNTY, TEXAS



**Picture of Commercial Building which built during-1990-1993**



**Below Tax ID for A-Mart Enterprises**

5#11811X3  
EX11811X3

**Merchants: DO NOT** accept a copy of this permit in place of a resale or exemption certificate. You will be responsible for sales tax unless you have a valid resale/exemption certificate on file.

**ABRAHAM A BIGANI**  
TAXPAYER NAME, TITLE, PHONE AND PHYSICAL LOCATION

**A-MART ENTERPRISES**  
12602 BLACKFOOT TRL  
AUSTIN TX 78729

**SIC CODE: 5713** DESCRIPTION ON NEXT LINE:  
Floor Covering Stores

**WE SHOW THIS BUSINESS IN THE FOLLOWING LOCAL SALES TAX JURISDICTIONS:**  
TRANSIT: AUSTIN MTA EFF: 05/01/1997

**YOU MAY NEED TO COLLECT SALES AND/OR USE TAX FOR OTHER LOCAL TAXING AUTHORITIES DEPENDING ON YOUR TYPE OF BUSINESS.**  
If you have any questions regarding sales tax, you may contact the Texas State Comptroller's field office in your area or call 1-800-255-5555, toll free, nationwide. The Austin number is 512/463-4000. If you are calling from a Telecommunications Device for the Deaf (TDD), the toll free number is 1-800-248-4000, or in Austin, 512/463-4621.

**John Sharp**  
JOHN SHARP  
Comptroller of Public Accounts

Type of Permit		SALES AND USE TAX	
Exempt number	2-164-43-4820-3	Exempt number	00002
Exempt number	00002	Exempt number	00002
First business date	05/01/1997	First business date	05/01/1997

**#SP-97-0439 D**

**LOT 1**

WOOD FENCE

N70°42'00"E

151.00'

14" LO

14" LO

14" LO

12" LO

20" LO

EXISTING SEPTIC FIELD

EXISTING RESIDENCE

EXISTING STORAGE BUILDING ON CONC. SLAB

EXISTING RESIDENCE & IMPORT/EXPORT BUSINESS ONE STORY F.F.=914.32

EXISTING TWO CAR CONCRETE DRIVEWAY

913

912

10" ELM

18" LO

24" LO

CONC. SW

913

146.73

43.2'

9.4'

11.4'

22.2'

12.3'

5.3'

24.7'

4.1'

12.4'

14.2'

17.9'

59.8'

48.5'

25.0'

25' B.L.

EXISTING BEAUTY SHOP ONE STORY F.F.=914.16

K2

K8

K8

K7

K5

K4

K5

K6

K10

K3

5 SP. @ 7.5' L = 37.5'

9 SP. @ 9.0' = 81.0'

18.5'

26'

15.0'

5'R

5'R

5'R

6" PVC SDR 35

CONCRETE PAVEMENT

K1

8 SP. @ 9.0' = 81.0'

18.5'

15'R

10' FUTURE R.O.W. RESERVED AS PER SEC. 13-5-8

PROPERTY LINE

131.00'

911

N25°49'17"E

C=28.47 A=51.68

BACK OF CURB AT R.O.W. LINE

**LOT 2**

INV. ELEV. (OUT)=907.68

CAPPED END

A/C

5'R

5'R

5'R

18.5'

26'

15.0'

5 SP. @ 7.5' L = 37.5'

9 SP. @ 9.0' = 81.0'

18.5'

26'

15.0'

5'R

5'R

5'R

6" PVC SDR 35

CONCRETE PAVEMENT

K1

8 SP. @ 9.0' = 81.0'

18.5'

15'R

10' FUTURE R.O.W. RESERVED AS PER SEC. 13-5-8

PROPERTY LINE

131.00'

911

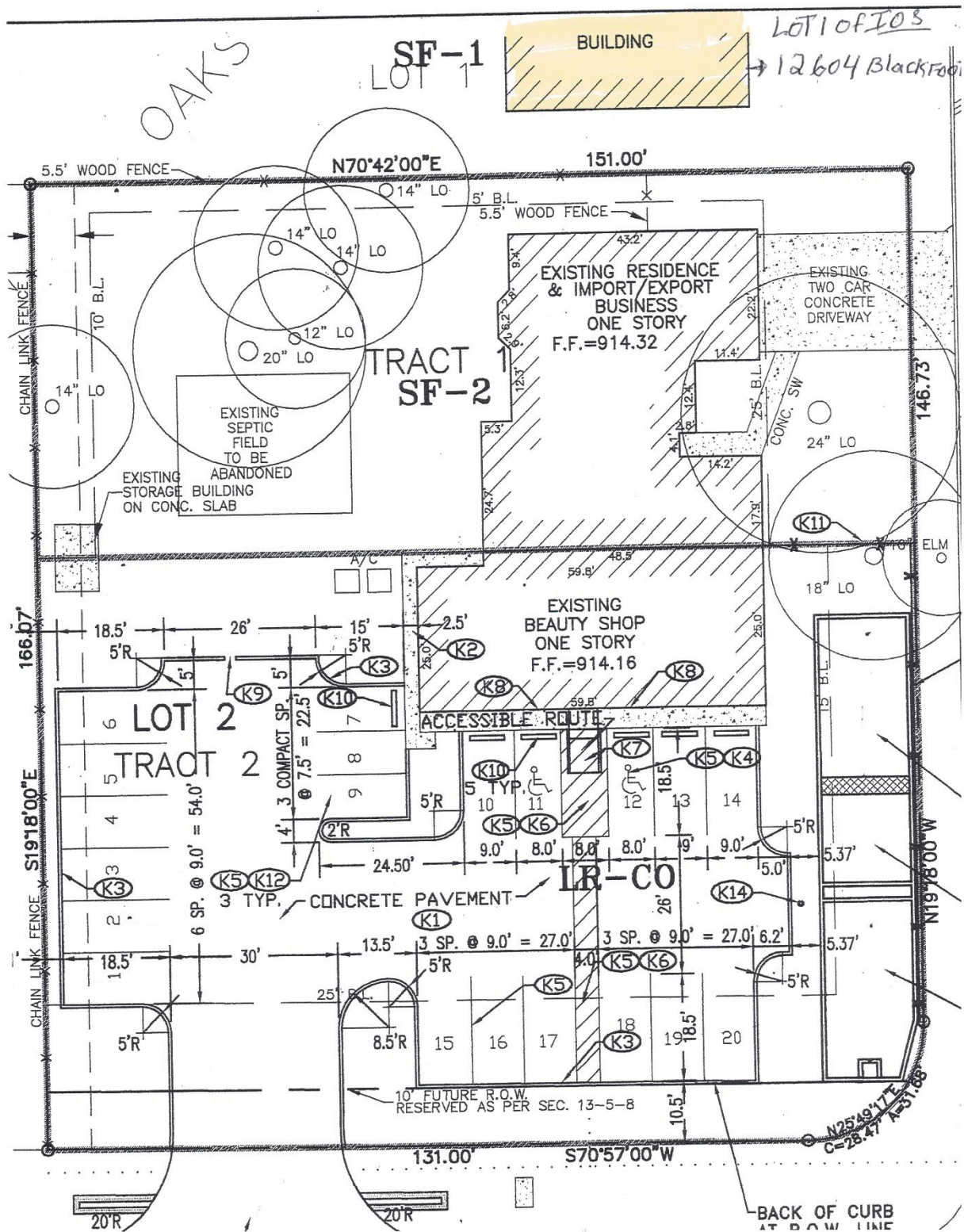
N25°49'17"E

C=28.47 A=51.68

BACK OF CURB AT R.O.W. LINE



**See approved Site plan permit # SP-99-2171Cplan after annexation**



## **Below see Ms. Rhonda Paver removal of their formal opposition**



June 1, 2017

**AUSTIN, TX:**

1710 Richcreek Rd. 78757  
8419 Bowling Green Dr. 78757  
8121 Shoal Creek Blvd. 78757  
6616 McNeil Dr. 78729  
9914 Woodland Village Dr. 78750  
12301 Hymeadow Dr. 78750  
7700 West Parmer Ln. 78729  
2001 Wells Branch Pkwy. 78728  
1007 E. 40th St. 78751  
9405 Brodie Ln. 78748  
9325 Alice Mae Ln. 78748

**LEANDER, TX:**

225 Block House Dr. 78641

**KYLE, TX:**

4624 Ratcliffe Dr. 78640  
1020 Lightfoot St. 78640

**ROUND ROCK, TX:**

7601 O'Connor Dr. 78681  
2301 N. A.W. Grimes Blvd. 78665  
651 Teravista Pkwy. 78665

**COLLEGE STATION, TX:**

900 University Oaks Blvd. 77840  
205 Rock Prairie Rd. 77845

**ADMINISTRATIVE OFFICE:**

1910 Justin Ln. 78757  
(512) 459-0258  
Fax (512) 467-1824

[www.SteppingStoneSchool.com](http://www.SteppingStoneSchool.com)

Planning & Zoning Dept.  
c/o Ms. Sherri Sirwaitis -- Case Manager  
505 Barton Springs Rd.  
Austin, TX 78704

Re: Case Number: 2017-042740 ZC or C14-2017-0042; Zoning/Rezoning

Dear Ms. Sirwaitis,

After discussions with the property owner, Mr. Birgani, where he indicated he would not seek a zoning classification that allows for the sale of alcohol, we withdraw our formal opposition to the pending application.

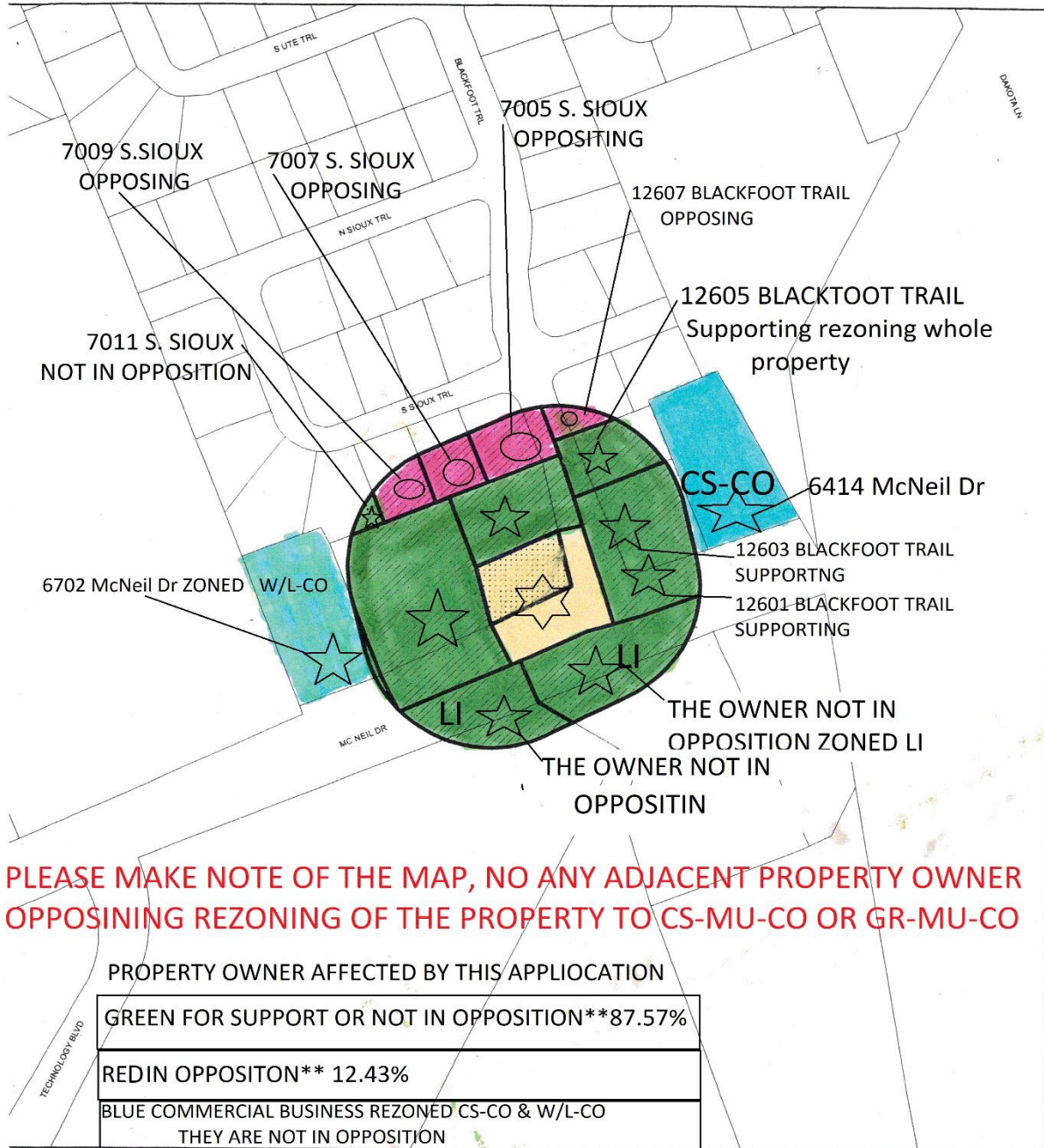
If you have any questions, please feel free to contact me.

Sincerely,

A handwritten signature in cursive script that reads 'Rhonda Paver'.

Rhonda Paver

## **NO Adjacent property owner opposition to Rezoning to this property**



" = 200'

- BUFFER
- PROPERTY\_OWNER
- SUBJECT\_TRACT

### **PETITION**

CASE#: C14-2017-0042

This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries.

This product has been produced by CTM for the sole purpose of geographic reference. No warranty is made by the City of Austin regarding specific accuracy or completeness.



## No Valid Petition

Case Number:  
**C14-2017-0042**

### PETITION

Date: 6/5/2017  
Total Square Footage of Buffer: 219055.5379  
Percentage of Square Footage Owned by Petitioners Within Buffer: 12.43%

Calculation: The total square footage is calculated by taking the sum of the area of all TCAD Parcels with valid signatures including one-half of the adjacent right-of-way that fall within 200 feet of the subject tract. Parcels that do not fall within the 200 foot buffer are not used for calculation. When a parcel intersects the edge of the buffer, only the portion of the parcel that falls within the buffer is used. The area of the buffer does not include the subject tract.

TCAD ID	Address	Owner	Signature	Petition Area	Percent
R322530	6702 MCNEIL DR     AUSTINTX78729	6702 MCNEIL LTD	no	1131.25	0.00%
R065469	12502 BLACKFOOT TRL     AUSTINTX78729-7703	BIRGANI   ABRAHAM	no	21045.84	0.00%
R065374	7005 S SIOUX TRL     AUSTINTX78729-7742	FEHR   E SCOTT	yes	10462.69	4.78%
R065372	7005 S SIOUX TRL     AUSTINTX78729	GALAVIZ ABEL & MARIA R (LE) & REVOCABLE LIVING TRUST	yes	6075.02	2.77%
R065371	7011 S SIOUX TRL     AUSTINTX78729-7742	JACKSON   JANIE S & ROBERT	no	1597.14	0.00%
R322627	1910 JUSTIN LN     AUSTINTX78757-2492	PAVER FAMILY ENTERPRISES LP	no	55440.53	0.00%
R065560	% PS BUSINESS PARKS INC Attn: Assistant Vice President-A/D701 WESTERN AVE GLENDALE CA 91201	PS BUSINESS PARKS LP	no	20336.50	0.00%
R405452	ATTN: BRIAN HURLEY% HRPT PROPERTIES TRUST 9 GALEN ST STE 400 WATERTOWN MA 02472-4522	RESEARCH PARK PROP TRUST	no	28823.08	0.00%
R065362	12607 BLACKFOOT TRL     AUSTINTX78729-7704	ROBERTS   DAVID ALAN & PAMELA JO	yes	3577.07	1.63%
R065364	12605 BLACKFOOT TRL     AUSTINTX78729	SIEBELINK   DAVID & ROBIN F	no	12362.90	0.00%
R065373	7006 S SIOUX TRL     AUSTINTX78729-7741	TRENHOLM   JOHN D & LINDA	yes	7121.81	3.25%
R065365	12603 BLACKFOOT TRL     AUSTINTX78729-7704	ZARCHI   MEHDI & ELHAM TARKASHVAND	no	33718.09	0.00%
<b>Total</b>				<b>201691.93</b>	<b>12.43%</b>

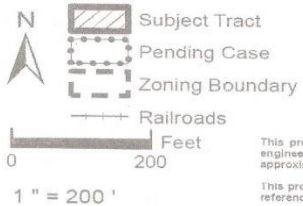


**Please see below case#C14-98-0060 zoned CS-CO**



### ZONING

Case#: C14-2017-0042



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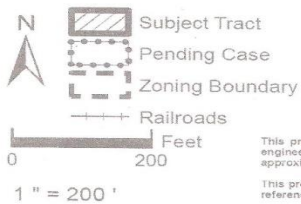
Created: 4/19/2017

Please see Below case# C14-2011-0046 zoned W/LO-CO



### ZONING

Case#: C14-2017-0042



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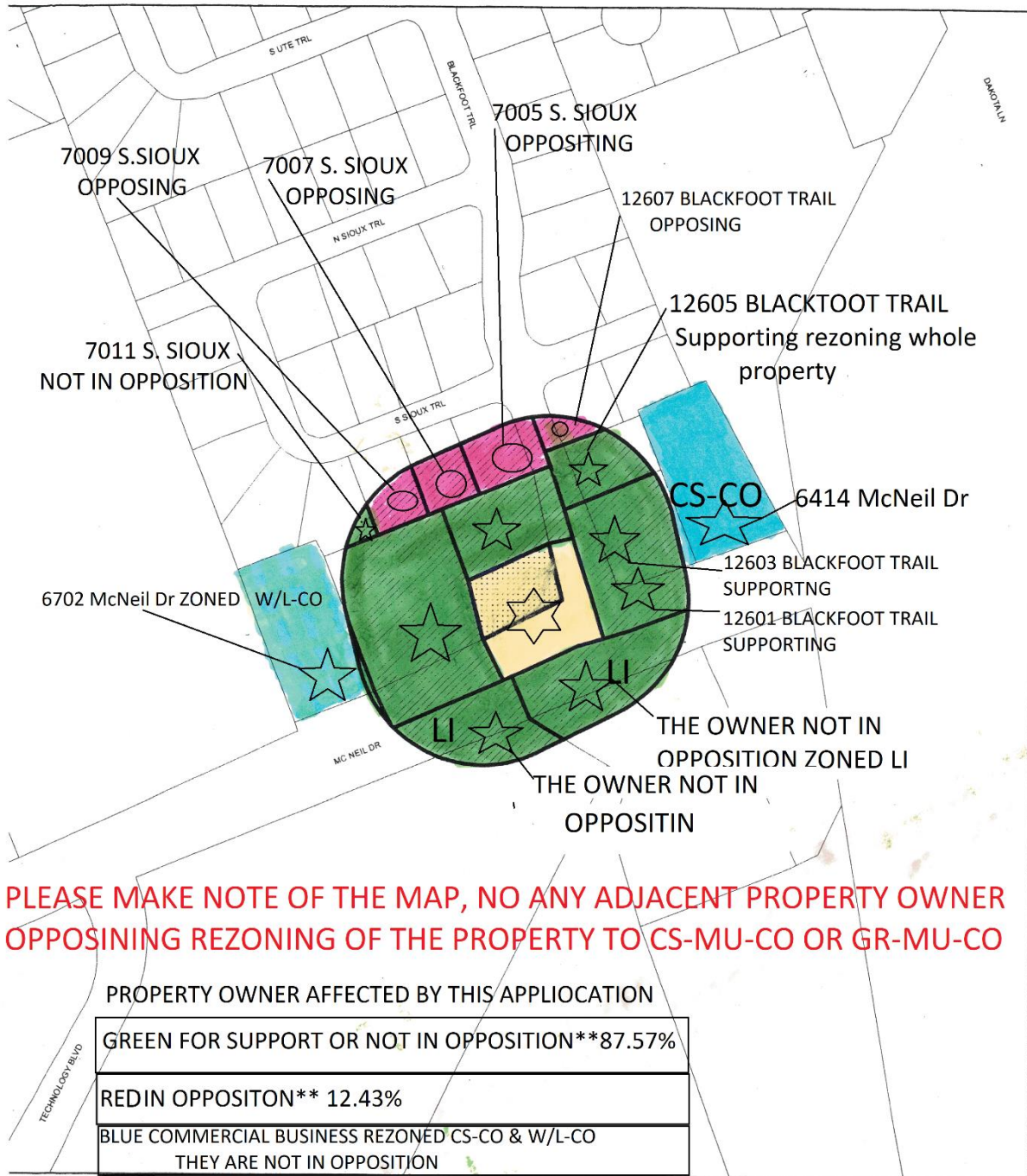
Created: 4/19/2017

## Zoning Map Of 5 entrances to Neighborhoods From McNeil Dr.





# NO ADJACENT PROPERTY OWNER IN OPPOSITION OF ZONING WHOLE LOT-2



" = 200 '

- BUFFER
- PROPERTY\_OWNER
- SUBJECT\_TRACT

## PETITION

CASE#: C14-2017-0042

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Above picture of my property case # C14-2017-0024



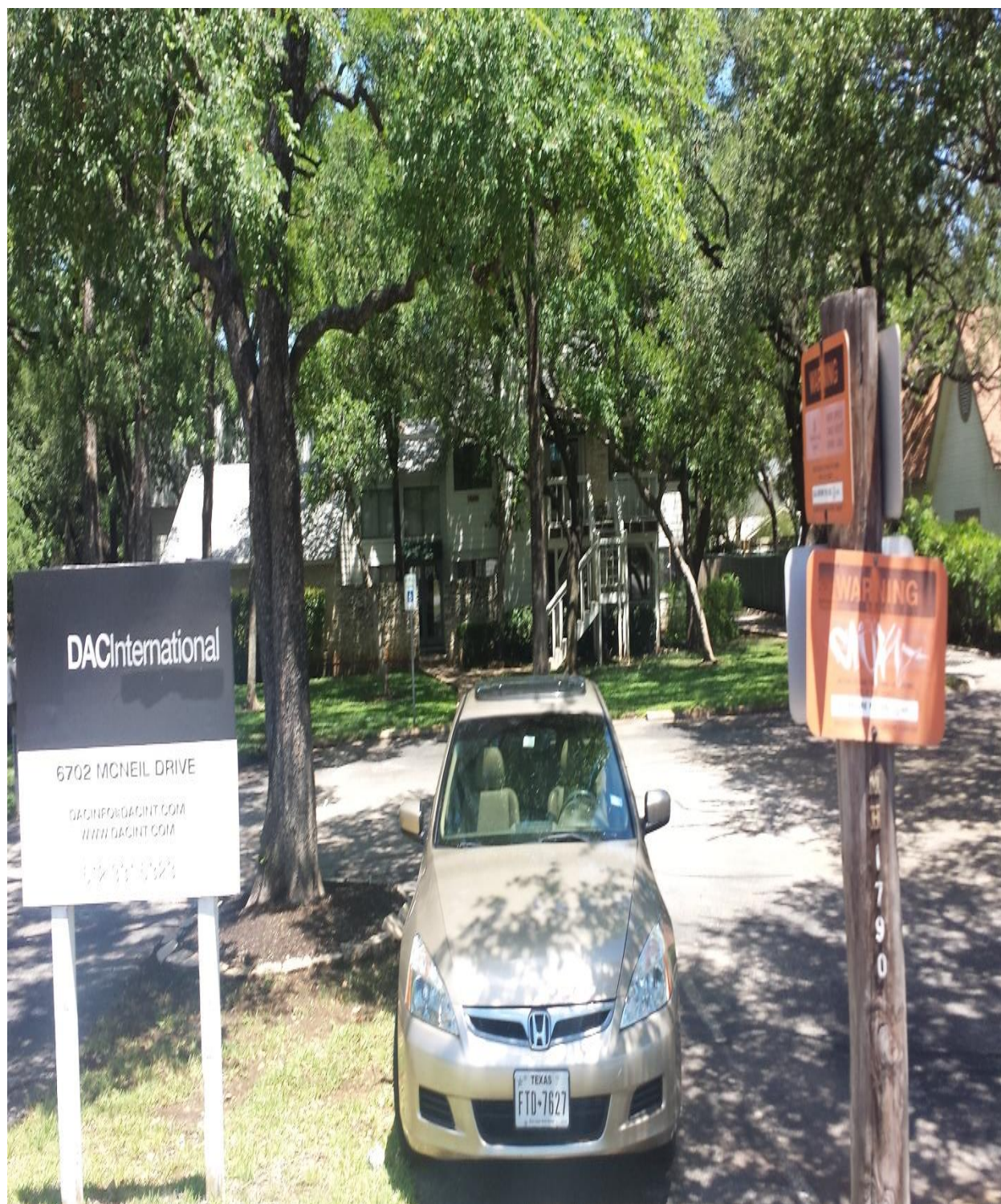
























































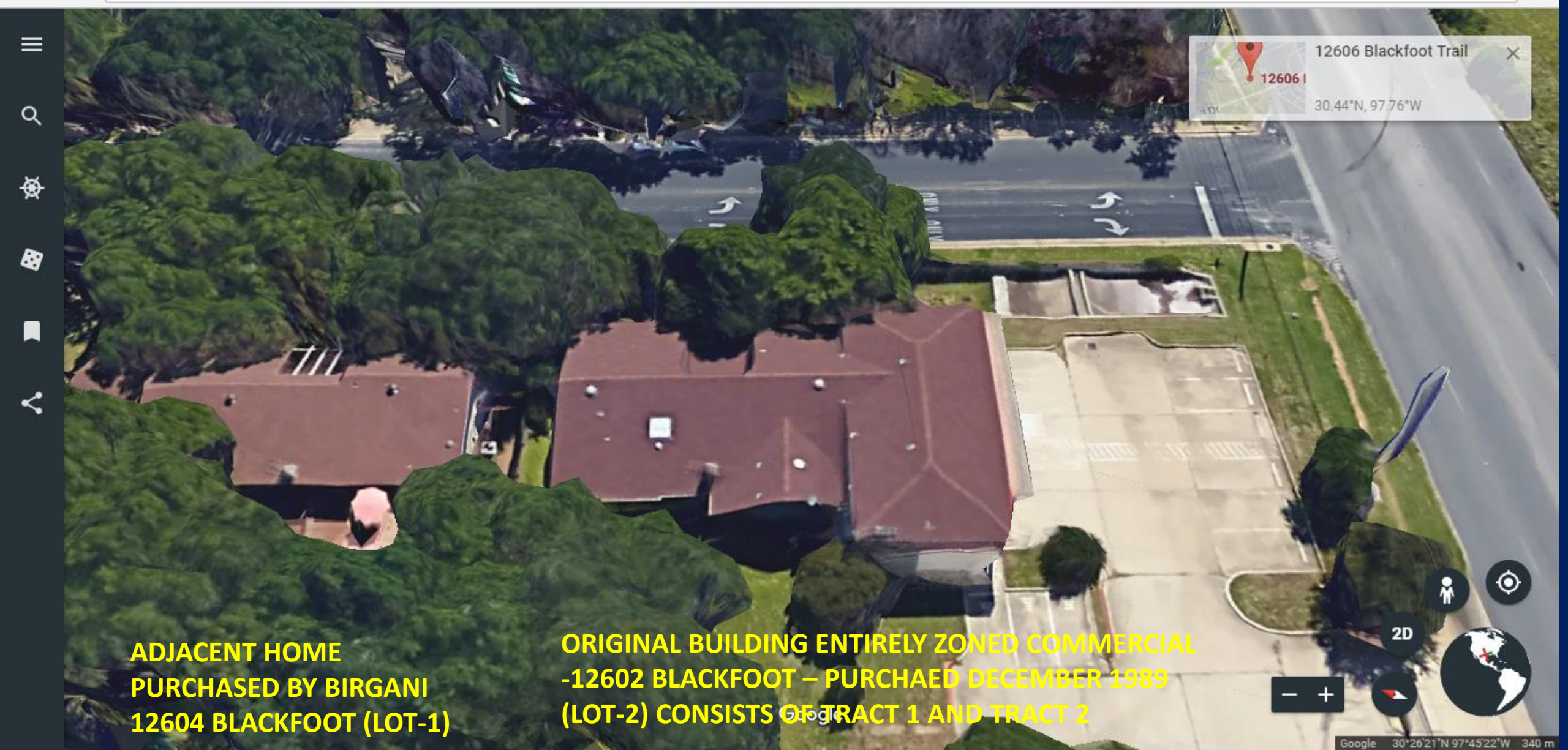






# **Rezoning Application of Abraham Birgani**

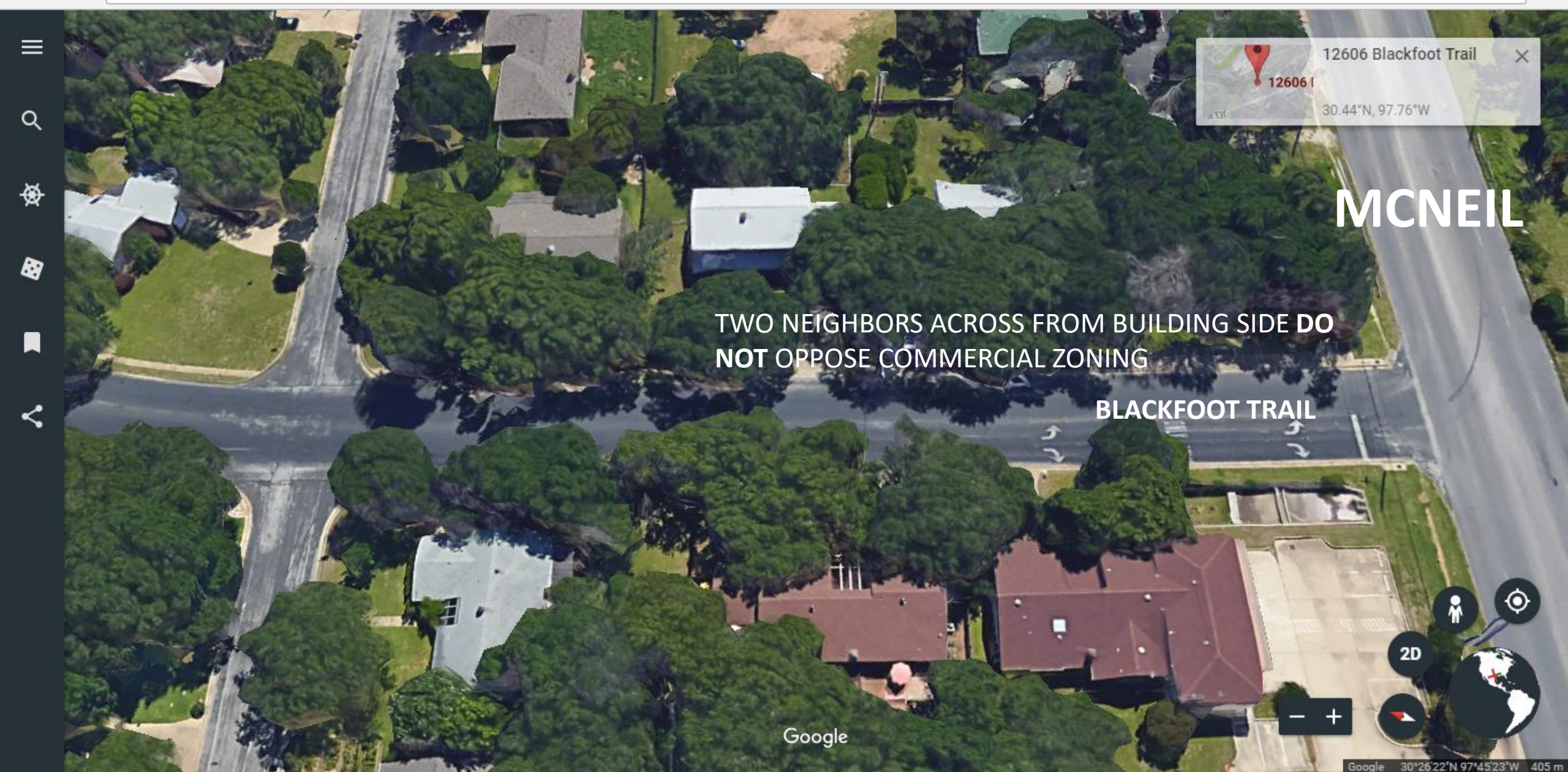
**Case No.: C14-2017-0042  
6610 McNeil Road/  
12602 Blackfoot Trail**



**ADJACENT HOME  
PURCHASED BY BIRGANI  
12604 BLACKFOOT (LOT-1)**

**ORIGINAL BUILDING ENTIRELY ZONED COMMERCIAL  
-12602 BLACKFOOT – PURCHASED DECEMBER 1989  
(LOT-2) CONSISTS OF TRACT 1 AND TRACT 2**





MCNEIL

TWO NEIGHBORS ACROSS FROM BUILDING SIDE DO  
NOT OPPOSE COMMERCIAL ZONING

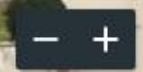
BLACKFOOT TRAIL

12606 Blackfoot Trail

12606 I

30.44°N, 97.76°W

Google





# INDIAN OAKS 2 SUBDIVISION- COMMERCIAL ZONED SINCE 1985 = LOTS 1 AND 2 OUT OF INDIANS OAKS 2

INDIAN OAKS 2

See Amended Plat of Lots 2, 3 & 4  
Tab. 2, Slide 264

SCALE: 1"=100'  
S = 1/8" = 100'  
D = 1/8" = 100'

TRACT 1  
TRACT 2  
TRACT 3  
TRACT 4  
TRACT 5  
TRACT 6  
TRACT 7  
TRACT 8  
TRACT 9  
TRACT 10  
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STATE OF TEXAS  
COUNTY OF WILLIAMSON  
I, the undersigned authority, on this day personally appeared Roscoe C. Milligan and wife Annie Milligan, owners of Lots 3 & 4 shown hereon by virtue of that deed recorded in Vol. 500, Page 496, Williamson County Deed Records, and Patrick W. Casey Homes, Inc., owners of Lot 1 & 2 shown hereon by virtue of that deed recorded in Vol. 500, Page 496, Williamson County Deed Records, do hereby subdivide 3.34 acres out of the Me. J. Baker Survey No. 10, in Williamson County, Texas, in accordance with this plat to be known as INDIAN OAKS 2, and do hereby dedicate to the public the streets and easements as shown hereon.

WITNESS my Hand and Seal of Office, this 6th day of July, A.D. 1977.

PATRICK W. CASEY HOMES, INC., a corporation organized and existing under the laws of the State of Texas, with its home office located in Austin, Texas:  
Patrick W. Casey, President

Before me, the undersigned authority, on this day personally appeared Roscoe C. Milligan and wife Annie Milligan and Patrick W. Casey, President of Casey Homes, Inc., known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that they each executed the same for the purposes and considerations therein expressed, in the capacities therein stated, and as officers and agents of the corporation.

Given Under My Hand and Seal of Office, this 6th day of July, A.D. 1977.

APPROVED FOR ACCEPTANCE August 9, A.D. 1977  
JAMES T. LITTLE, DIRECTOR OF RECORDS

ACCEPTED AND AUTHORIZED FOR RECORD BY THE CLERK PLANNING COMMISSION OF WILLIAMSON COUNTY, TEXAS, this 27th day of August, A.D. 1977.  
Mary Ellen Johnson, Secretary

FIELD NOTES: Describing 3.34 acres of land out of the Me. J. Baker Survey No. 10 in Williamson County, Texas:  
BEGINNING at an iron stake at the southeast corner of the Roscoe C. Milligan tract described in Vol. 500, Page 496, Williamson County Deed Records, also said beginning point is the southeast corner of said Baker Survey No. 10  
THENCE along the north line of said Baker Survey No. 10, R/W 5/8" = 100' to an iron stake for southeast corner;  
THENCE N19°18'W 290.03 ft to iron stake at the southeast corner of Lot 1 Block 2 Indian Oaks, plat book 66, page 3, Travis County Plat Records, for corner;  
THENCE S20°42'W 382.08 ft, N19°20'W 25.31 ft, and S74°42'W 134.08 ft to an iron stake at the southwest corner of Lot 4, Block B, of said Indian Oaks, for corner;  
THENCE S19°22'W 156.6 ft and S19°07'W 156.61 ft to the place of BEGINNING, containing 3.34 acres;

I, James T. Watson, do hereby certify that the above Field Notes and Plat represent the results of an actual survey made on the ground under my supervision according to law, the iron stakes shown were properly placed in accordance with Austin City Code Chapter 23.27 of 1954.

June 20, 1977  
James T. Watson, Surveyor

This Subdivision has been approved by the Williamson County Health Department for a lot which will be served by septic tanks.

Date June 23, 1977  
William H. Steinhilber, Health Officer

"In approving this plat by the Commissioners Court of Williamson County, Texas, it is understood that the building of all streets, roads, or other public thoroughfares, and any bridges or culverts necessary to be constructed or placed on any streets, road, or other public thoroughfare shown on this plat, or in connection therewith, shall be the responsibility of the owner and/or developer of the tract of land covered by the plat, and shall be completed in accordance with the specifications of the Commissioners Court of Williamson County, Texas, and said Commissioners Court assumes no obligation to build or maintain any of the streets, roads, or other public thoroughfares shown on this plat or of constructing any of the bridges or culverts to be constructed thereon. It is further understood that upon completion of the aforesaid obligations of the developer and the occupancy of the lots along the roadways and streets in the subdivision has been achieved, and all driveway easements have been installed and approved, permission from the County Commissioner, the Commissioners Court assumes full responsibility for maintenance of said streets, roads, and drainage facilities."

THE STATE OF TEXAS:  
COUNTY OF WILLIAMSON:  
I, C. L. Chance, County Judge of Williamson County, Texas, do hereby certify that this map or plat with its field notes attached hereon, and the surveyors certificate appearing hereon, that INDIAN OAKS 2 having been duly presented to the Commissioners Court of Williamson County, Texas, and by the said Court duly considered, was on this day approved and said plat is authorized to be registered and recorded in the proper records of the County Clerk of Williamson County, Texas.

Date September 1, 1977  
C. L. Chance, Judge, Williamson County, Texas

STATE OF TEXAS:  
COUNTY OF WILLIAMSON:  
I, Dick Cervantes, Clerk of the County Court, within and for the County and State aforesaid, do hereby certify that the foregoing instrument of writing, with its certificate of authentication, was filed for record in my office on the 28th day of August, A.D. 1977, at 1:30 p.m., and duly recorded on the 28th day of August, A.D. 1977, at 1:30 p.m., in the plat records of said County, in page 84.

Witness My Hand and Seal of the Court of said County, at office in Georgetown, Texas, the date last written above.  
Dick Cervantes, Clerk County Court, Williamson County, Texas  
Deputy: Rusty B. Baker

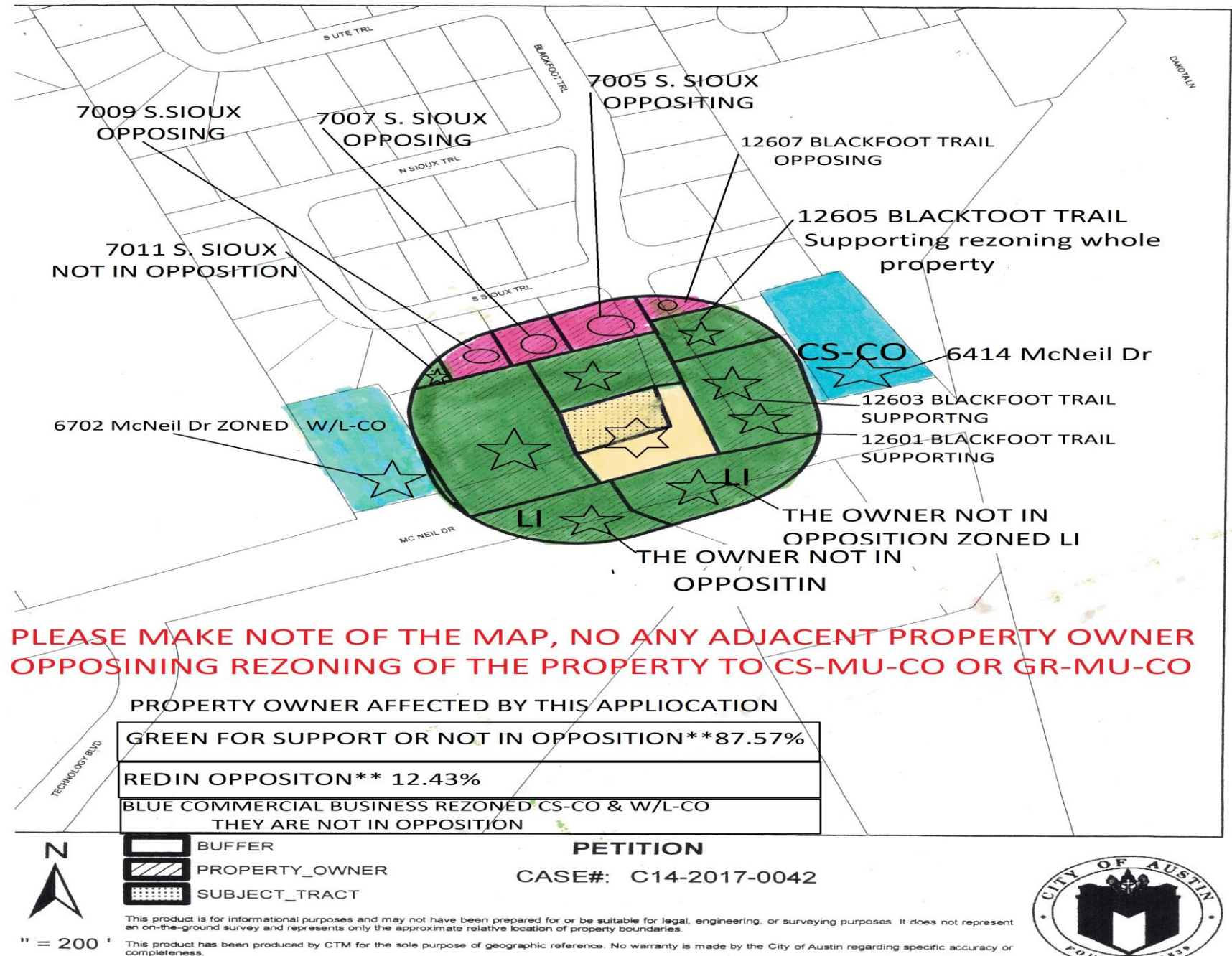
The lots in this subdivision are hereby restricted against occupancy until connection is made to a septic tank system approved by Williamson County Health Dept. or to a public sewer system.

D.D. 1-19-20

C8 2-77-149



PLEASE MAKE NOTE,  
 NO ANY ADJACENT  
 PROPERTY OWNER  
 ADJACENT TO THE  
 SUBJECT PROPERTY  
 (CASE# C14-2017-  
 0042) ARE IN  
 OPPOSITON TO  
 ZONING ALL THE  
 PROPETY TO **CS-MU-  
 CO OR-MU-CO**



- **Property consists of one building, the front part facing McNeil and side extending onto Blackfoot Trail located in Williamson County and has been commercialized since 1985**
- **When purchased in December 1989, it was zoned entirely commercial until the City of Austin annexed it in 1997**
- **Prior to annexation, Mr. Birgani had all the permits and Austin city approved site plan, consisting of elaborate drainage structure and parking lot— permit #SP-97-0439D**
- **Unbeknownst to Mr. Birgani, city zoned entire property SF-1 (residential), and red-tagged his entire business, stopped construction, revoked all his permits and approved site plan**

**Faced with tremendous financial loss, Mr. Birgani was compelled to enter an onerous zoning agreement with city:**

**1. City drew artificial property line through part of building and forced him to submit another site plan which was approved 2.5 years later - (The site plan No. SP-99-2171C)**

**2. Zoned front portion (1416 square feet) as LR-CO and imposed with impossible conditions in restrictive covenant (also in Ordinance No. 990722-46), PROHIBITING:**



- a. Consumer Convenience Services**
- b. Food Sales**
- c. General Retail Sales**
- d. Bed and Breakfast**
- e. Restaurant**
- f. Congregate Living**
- g. Community Recreation**
- h. Guidance Services**
- i. Residential Treatment**
- j. Consumer Repair Services**
- k. General Retail Sales (Convenience)**
- l. Pet Services**
- m. Restaurant (Drive-In, Fast Food)**
- n. Service Station**
- o. Community Recreation (Private)**
- p. Counseling Services**
- q. Hospital Services**



**The most onerous restriction imposed “hours-of-operation restriction:**

- ❖ **Monday through Friday 8:00 a.m. until 8:00 p.m.**
- ❖ **Saturdays – 8:00 a.m. until 12:00 noon**
- ❖ **Sunday- CLOSED**

**Due to such restrictions, it remained vacant for 14 of 20 past years.**





**DRAINAGE SYSTEM CONSTRUCTED AT APPROXIMATE COST OF  
\$300,000.00**





**SIDE VIEW FROM BLACKFOOT – 6-FOOT FENCE WITH DRAINAGE  
SYSTEM BEHIND MAKES BLACKFOOT ACCESS IMPOSSIBLE**



# PLANNING AND ZONING RECOMMEDATION – AUGUST 15TH

- ❖ MAINTAINED ARTIFICIAL DIVISION OF BUILDING AND REZONED BACK HALF OF BUILDING AS SF-(RESIDENTIAL)
- ❖ REZONED FRONT PORTION OF BUILDING FACING McNeill (1416 SQAURE FEET) AS GR-MU-CO WITH OVERLAY CONDITIONS PROHIBITING:
  1. Prohibit Alternative Financial Services
  2. Automotive Washing (of any type)
  3. Bail Bond Services
  4. Drop-Off Recycling Collection Facility,
  5. Medical Office-exceeding 5,000 sq. ft. gross floor area
  6. Medical Offices-not exceeding 5,000 sq. ft. gross floor area,
  7. Outdoor Entertainment
  8. Pawn Shop Services



9. Service Station,
10. Congregate Living
11. Guidance Services
12. Hospital Services (General),
13. Hospital Services (Limited),
14. Residential Treatment and Drive-In Services
15. maintain the condition from Ordinance No. 9907722-46 that,  
“Pedestrian and vehicular traffic associated with a non-residential use  
on the Property may not access Blackfoot Trail.”

(7-0, D. Breithaupt, B. Evans, S. Lavani and S. Trinh-absent); J. Duncan-  
1<sup>st</sup>, A. Aguirre-2<sup>nd</sup>.

❖ MR. BIRGANI ABSOLUTLEY AGREES THAT THERE WILL BE NO ACCESS FROM BLACKFOOT BECAUSE:

1. IT WOULD IMPEDE TRAFFIC FLOW ON BLACKFOOT AND IS NOT CONSISTANT WITH NEIGHBORHOOD

2. IT IS PHYSICALL IMPOSSIBLE DUE TO DRAINAGE SYSTEM

# CURRENT RECOMMENDATION STILL MAKES PROPERTY COMMERICALLY UNFEASIBLE

- RESTRICTIONS ON MEDICAL OFFICES, PAWN SHOPS, AND  
ALTERNATIVE FINANCIAL SERVICES
- LIMITING COMMERCIAL ENTERPRISE TO 1416 SQUARE FEET MAKES  
PROPERTY UNPROFITABLE AND RENDERS VALUE OF PROPERTY  
PRACTICALLY WORTHLESS AS COMMERCIAL PROPERTY
- **THE FOLLOWING FINANCIAL ANALYSIS  
SUPPORTS THAT CONCLUSION:**



**\*\*\*ADDITIONAL RIGHT-OF-WAY REQUIRED  
FOR ZONING CHANGE –  
7 MORE FEET FROM FRONT\*\*\***

- **Zoning Change Review Sheet - August 15, 2017 provides: “In addition, if the requested zoning change is granted, then 57 feet of right-of-way should be dedicated from the existing centerline of McNeil Drive to accommodate the required ROW for a Major Arterial Divided 4-lane roadway at 114 feet.”**
- **This provision was superseded by the ATD Memorandum of July 26, 2017, that provided in part: “. . .the Director has determined that the right-of-way dedication is deferred site plan.”**

**IN EVENT THAT MR. BRIGANI SUBMITS NEW SITE PLAN  
CITY CAN IMPOSE RIGHT-OF-WAY CONDITION OF 57  
FEET WHICH WILL CAUSE FOLLOWING PROBLEMS:**

- 1. Reducing the square footage of existing commercially zoned property by (2,625 square feet)**
- 2. Moving building, filtration-sedimentation-detention ponds and parking lot 7 feet or more back will reduce building space by another 420 square feet**
- 3. Reconstruction cost of above will cost at least \$450,000 or more**

# MR. BIRGANI SUFFERS A PROFIT LOSS UNDER CURRENT RECOMMENDATION WITH IMPOSITION OF RIGHT-OF-WAY

GROSS RENTAL INCOME ON NOW 930 SQUARE FEET (at \$1.75 per square foot per month based upon data from commercial realtor)

**\$19,530.00**

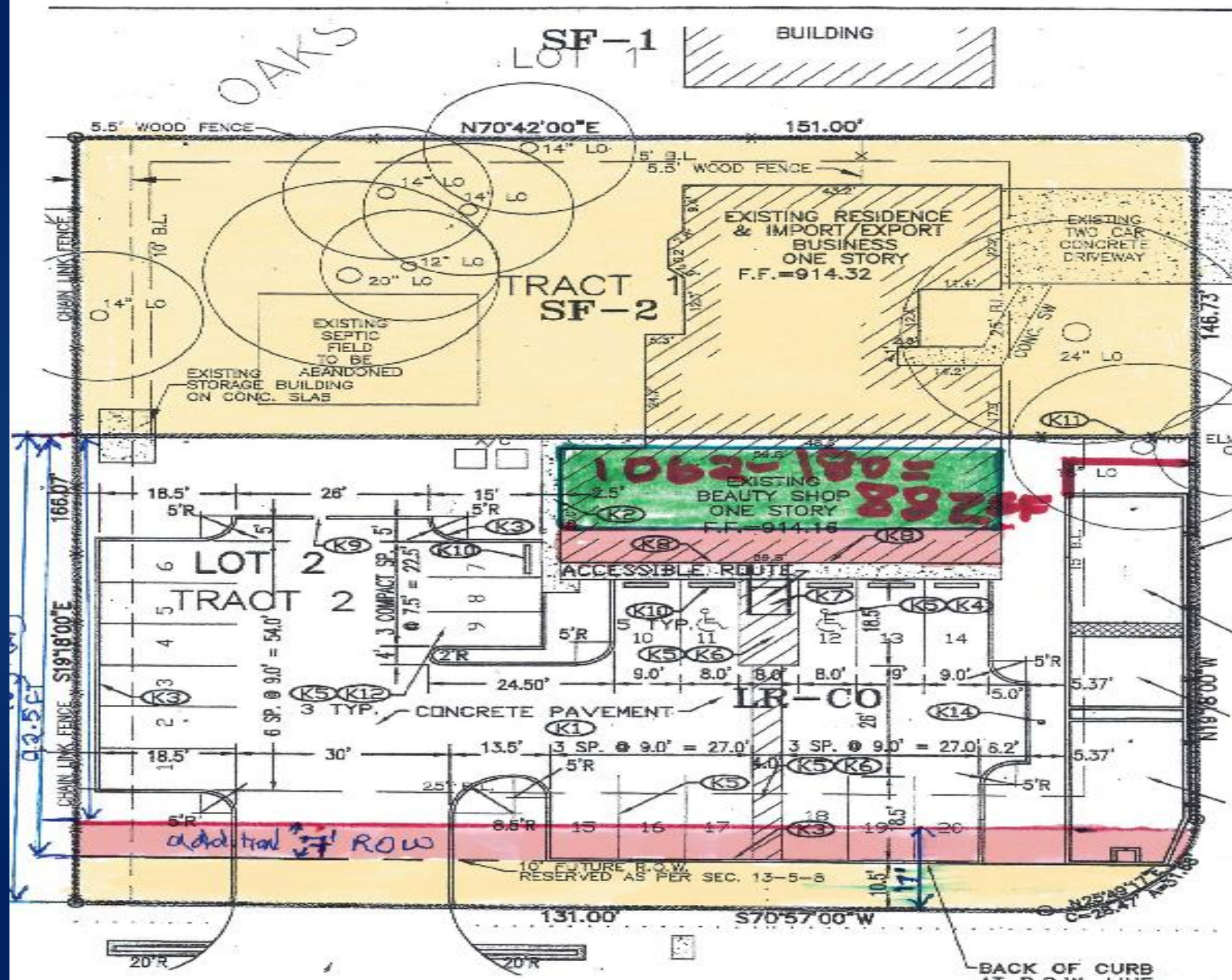
GROSS EXPENSES:

**\$19,729.00**

PROFIT

**MINUS -\$199.00**





UNDER CURRENT RECOMMENDATION  
(*WITHOUT RIGHT-OF-WAY*) --- MR. BRIGANI'S MINIMAL  
PROFIT RENDERS PROPERTY COMMERCIALY UNFEASIBLE

GROSS RENTAL INCOME ON 1416 SQUARE FEET (at \$1.75 per square foot  
based upon data from commercial realtor)

**\$29,736.00**

GROSS EXPENSES:

**\$19,729.00**

PROFIT

**\$10,007.00**

# BY EXTENDING THE GR-MU-CO INTO ALL BUT THE BACK 30 FEET OF THE PORTION OF THE BUILDING ZONED SF-2, MR. BRIGANI BEGINS TO MAKE PROPERTY PROFITABLE

GROSS RENTAL INCOME ON WITH EXTENDING GR-MU-CO 2,580 SQUARE FEET (at \$1.75 per square foot based upon data from commercial realtor)

**\$54,180.00**

GROSS EXPENSES:

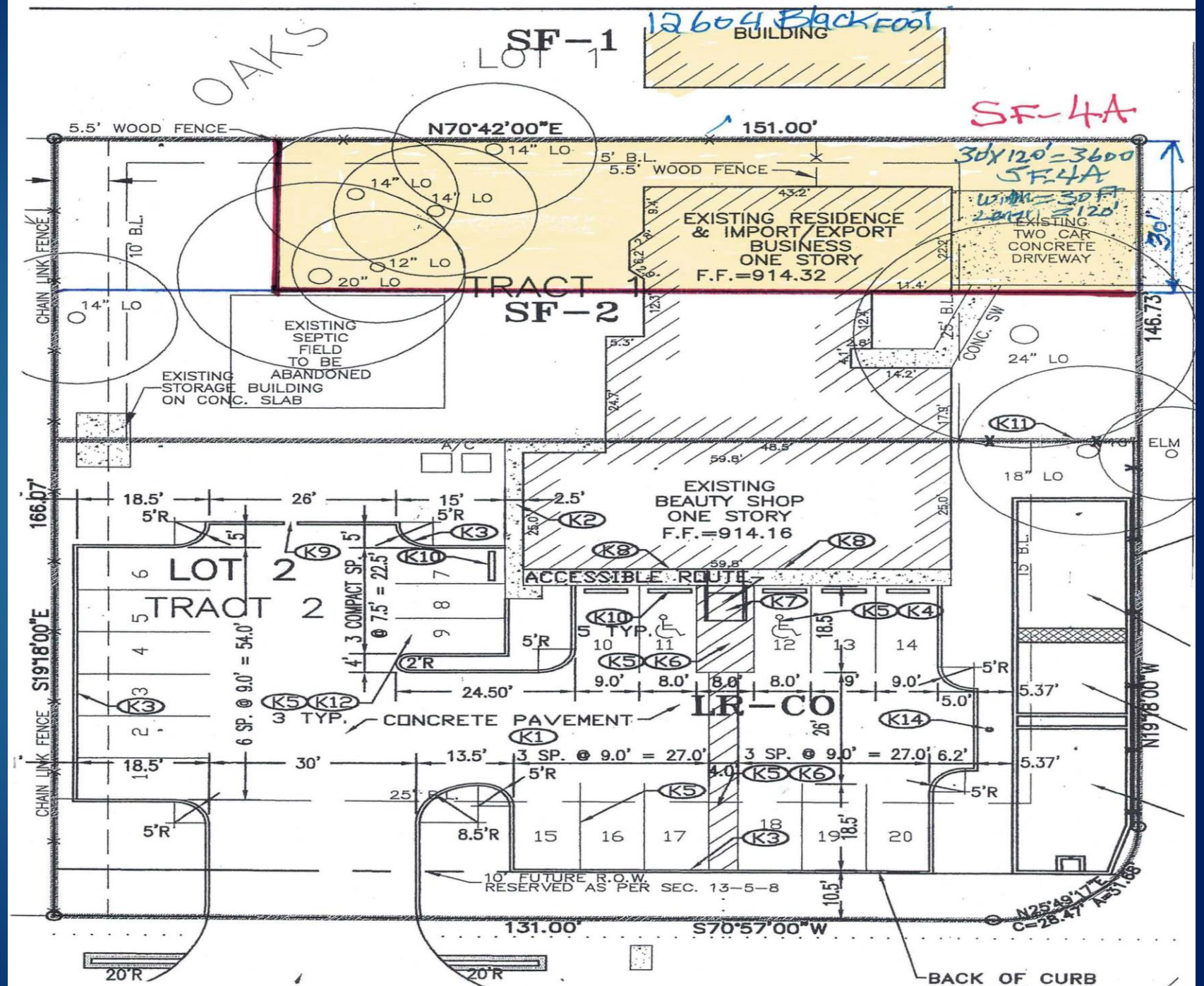
**\$22,000.00**

PROFIT

**\$32,180.00**



**SF-4A** SMALL  
LOT MINIMUM  
OF 3,600 BY  
EITHER A 30' X  
120' OR A 40' X  
90' SQUARE FEET  
BUFFER.



# BY EXTENDING THE GR-MU-CO INTO ALL OF THE PORTION OF THE BUILDING ZONED SF-2, MR. BRIGANI PROPERTY WOULD BE PROFITABLE

GROSS RENTAL INCOME ON 3526 SQUARE FEET (at \$1.75 per square foot  
based upon data from commercial realtor)

**\$74,046.00**

GROSS EXPENSES:

**\$20,000.00**

PROFIT

**\$43,760.00**

# IN THE EVENT THAT CITY EXTENDS GR-MU- CO INTO SOME OR ALL OF BACK PORTION OF BUILDING FACING BLACKFOOT

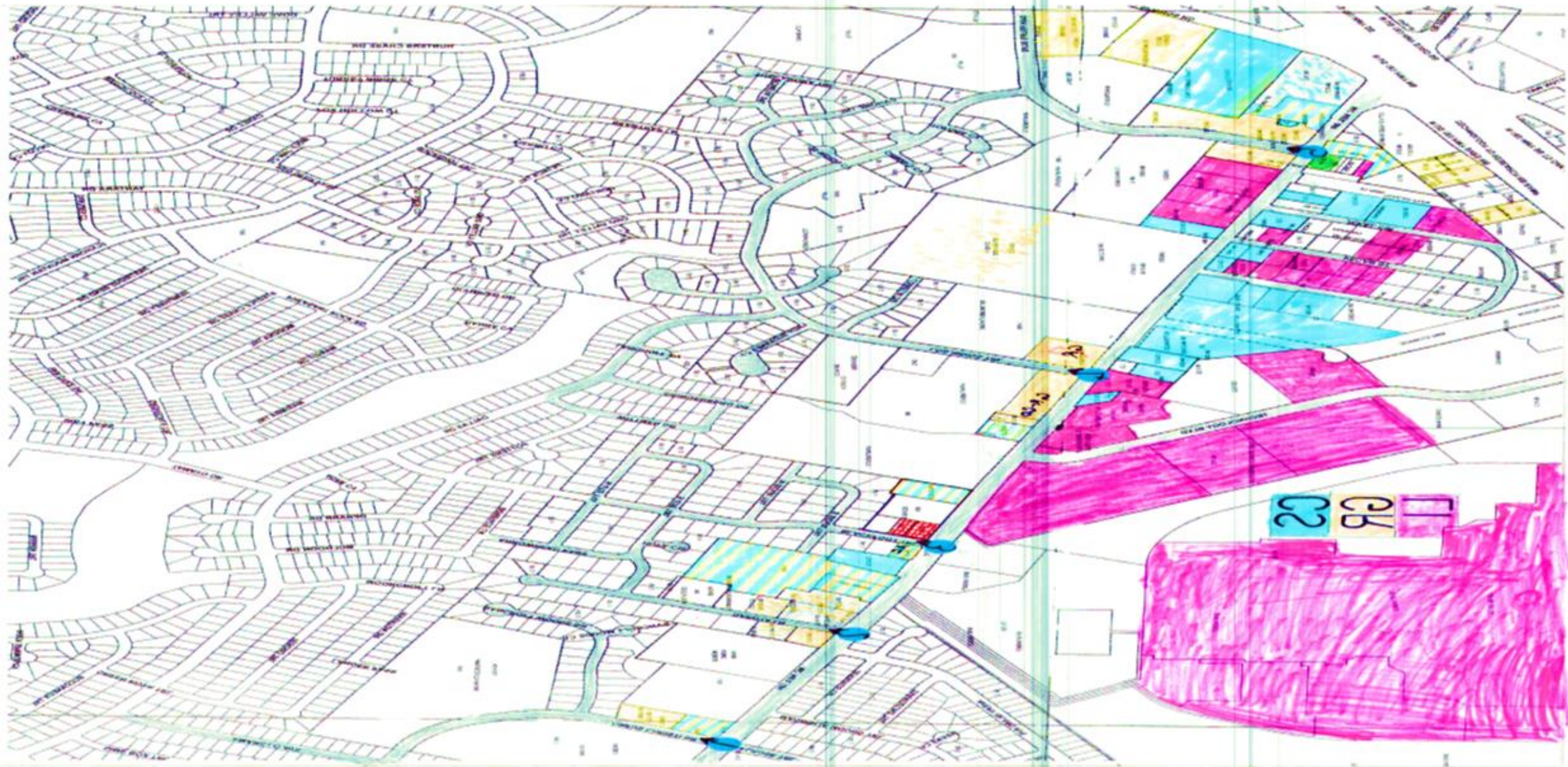
- 1) MR. BIRGANI WOULD ENSURE THAT SIDE OF BUILDING FACING BLACKFOOT IS AESTHETICALLY CONSISTANT WITH RESIDENTIAL CHARACTER OF NEIGHBORHOOD
- 2) ALL VEHICULAR OR PEDESTRIAN TRAFFIC WILL BE CONDUCTED SOLEY IN THE FRONT OF THE BUILDING FACING McNeill
- 3) THE COMMERCIAL USE OF SOME OR ALL OF THE BACK PORTION OF THE BUILDING WILL HAVE NO IMPACT ON NEIGHBORS

\*\*\*MR. BIRGANI'S PERSONAL RESIDENCE IS IMMEDIATELY NEXT DOOR TO THE BLACKFOOT SIDE OF THE BUILDING.\*\*\*



*THE CITY CANNOT JUSTIFY DISPARATE  
ZONING RECOMMENDATION BASED UPON  
THE FOLLOWING PROPERTIES*

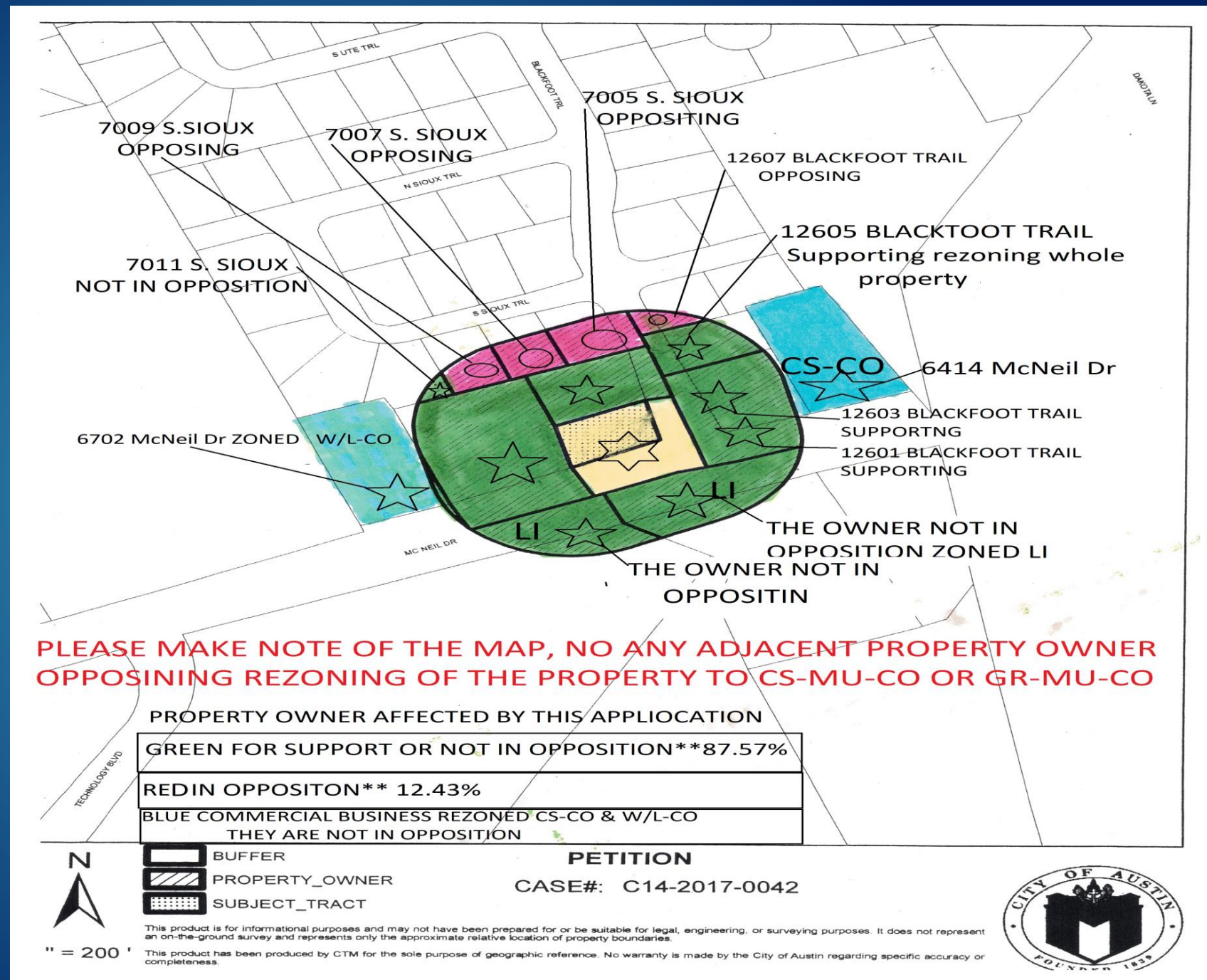






1-NO PROPERTY OWNER ADJACENT TO THIS APPLICATION IS IN OPPOSITON TO ZONING ALL LOT-2 (THE BACK HALF OF THE BUILDING) TO CS-MU-CO OR-MU-CO

2- NEITHER OF TWO RECENTLY REZONED PROPERTIES (HIGHLIGHTED IN BLUE) WAS DIVED BY CITY





1. FOUNDATION AUTO REPAIR - 6750 Corpus Christi Drive/McNeil - **Zoned as GR-CO – next to residence**
2. NEWIMAGE HAIR SALON - 6410 McNeil Drive/Dakota - **Zoned as GR-CO – two doors down from residence**
3. JOHNSON CUSTOM POOLS - 6514 McNeil Drive - **Zoned as CS-CO – adjacent to 5 residences**
4. DAC INTERNATIONAL-AEROSPACE ENGINEERING - 6702 McNeil Drive - **Zoned as W/L – adjacent to 2 residence**
5. NOT YET DEVELOPED - 6810 McNeil Drive - **Recently zoned as GR-CO – across from apartment homes**

6. 6914 McNeil Drive - Recently zoned as GR-CO – adjacent to apartment home and retirement home
7. VIDA MOTOR (auto sales) -7224 McNeil Drive - Zoned as CS-CO – adjacent to a residence
8. ADVANCED AUTO PARTS - 7308 McNeil Drive/San Filipe - Zoned as GR-CO- adjacent to a residence
9. MULTIPLE RESTAURANTS ETC. - 6914 McNeil Drive/San Filipe - Zoned as GR-CO and CS-CO – adjacent to apartment and retired homes





**NEW IMAGE HAIR SALON – 6410 McNeil – GR-CO**





**6914 McNeil – Recently Zoned as GR-CO**





**ADVANCED AUTO PARTS – 7308 McNeil – GR-CO**





**MULTIPLE RESAURANTS – 6914 McNeil – GR-CO AND CS-CO**



## LEGAL DISCRIPTION:

Lot 2, Indian Oaks 2, part of the Wm. J. Baker Survey #10, Recorded in the plat records, Cabinet J, Slide 264, of Williamson County, Texas

## SITE PLAN NOTES:

1. Total site is 25,039 square feet or 0.5748 acres.
2. Total are being developed is 17, 289 Square feet or 0.397 acres.
3. Existing impervious cover
  - a. 1-story building - 3888 SF 15.53%
  - b. Concrete flat work - 1073 SF 4.29%
  - Total Impervious cover - 4961SF 19.81%
4. Imperious cover to remain and new concrete pavement
  - a. 1-story building - 3888 SF 15.53%
  - b. Existing concrete flatwork - 982 SF 3.92%
  - c. New pavement - 91 SF .36%
  - d. New conc. Flat work - 12,812 SF 51.17%
5. Increase in Imperious Cover - 7851 SF - 31.36%
6. Limits of concrete construction within property lines - 13,130 SF

IN 1985, ENTIRE SECTION IN WHICH PROPERTY IS  
SITUATED (INDIAN OAKS 2 SUBDIVISION) WAS ZONED  
ENTIRELY COMMERCIAL  
UNTIL DECEMBER 31, 1997

Neighbors purchasing property in Indian Oaks  
between 1985 and December 31, 1997 had notice of  
the commercial nature of property.

See document below

STATE OF TEXAS  
COUNTY OF WILLIAMSON

§  
§  
§

18833

KNOW ALL MEN BY THESE PRESENTS:

WHEREAS, by Deed recorded in Volume 500, Page 496, of the Deed Records of Williamson County, Texas, a copy of which is attached hereto as Exhibit "A", RAYMOND FLOYD DAVIS and wife, ALINE DAVIS, and BEULAH DAVIS, as Grantors, did convey to ROSCOE E. MILLEGAN and wife, ANNIE MILLEGAN, as Grantees, those six (6) tracts of land situated in Williamson County, Texas, as are more fully described on Exhibit "A"; and

WHEREAS, BEULAH DAVIS is now deceased and DIANA EICHSTATDT, joined herein by her husband, DONALD L. EICHSTATDT, is her only heir; and

WHEREAS, ELAINE BARNES, wife of DALE BARNES, is now deceased; and

WHEREAS, RICHARD BOUTON and wife, DIANE BOUTON, CRAIG H. SHERPERT and wife, BARBARA SHERPERT, DALE BARNES and FRANK C. WOLCHICK, JR., are successors in title to portions of the hereinabove referenced property; and

WHEREAS, the above named MILLEGANS, BOUTONS, BARNES, SHERPERTS and WOLCHICK constitute all of the parties with any interest in and to the property described on Exhibit "A"; and

WHEREAS, the Deed attached as Exhibit "A" contains certain restrictions restricting the use of the property for residential purposes only, and the parties hereto now desire to amend said restrictions to permit any lawful use;

NOW THEREFORE, for and in consideration of the sum of TEN AND 00/100 DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned agree that the restrictions imposed upon the property are hereby amended and modified to provide that the property is no longer restricted to use for residential purposes only and may be used for any lawful purpose.

EXECUTED this 21<sup>st</sup> day of April, 1985.

ROScoe C. MILLEGAN

ANNIE MILLEGAN

DIANA EICHSTATDT

DONALD L. EICHSTATDT

RICHARD BOUTON

DIANE BOUTON

CRAIG H. SHERPERT

BARBARA J. SHERPERT

FRANK C. WOLCHICK, JR.

DALE BARNES

STATE OF TEXAS

§  
§  
§

COUNTY OF TARRANT

This instrument was acknowledged before me on APRIL 21, 1985, by